

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



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

C121209
 Dec 18, 2023
 JS

AND IN THE MATTER OF THE COMPROMISE OR
 ARRANGEMENT OF MANTLE MATERIALS
 GROUP, LTD. and RLF CANADA HOLDINGS LTD.

APPLICANT TRAVELERS CAPITAL CORP.
 RESPONDENT MANTLE MATERIALS GROUP LTD.

DOCUMENT APPLICATION (ENHANCE MONITOR'S POWERS)

ADDRESS FOR SERVICE AND
 CONTACT INFORMATION OF
 PARTY FILING THIS DOCUMENT

MLT AIKINS LLP
 2100, 222 - 3rd Ave SW
 Calgary, Alberta T2P 0B4
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 Attention: Ryan Zahara/Molly McIntosh
 File: 0160774.00002

NOTICE TO RESPONDENTS,

This application is made against you. You are a respondent.

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

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

Date: December 18, 2023
 Time: 2:00 PM MST
 Where: VIA WEBEX
 Before Whom: The Honourable Justice Nixon (on the Commercial List)

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

Remedy claimed or sought:

1. Travelers Capital Corp. (“**Travelers**”) seeks an Order from this Honourable Court granting the following relief:
 - (a) abridging the time for, and validating service of, this Application and the materials filed in support of this Application, if necessary, and dispensing with service on any party not served;
 - (b) if determined to be necessary, lifting the stay of proceedings in any Initial Order obtained by Mantle under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) for the purposes of allowing this application to proceed;
 - (c) enhancing and expanding the powers of the proposed monitor, FTI Consulting Inc (“**FTI**”, in such capacity the “**Proposed Monitor**”), of Mantle Materials Group, Ltd. (“**Mantle**”) as set forth in the proposed form of Order attached as **Schedule “A”** hereto, pursuant to section 11(1) and section 23(k) of the CCAA;
 - (d) a sealing order over any confidential information that it may be deemed necessary to preserve the confidentiality of and which may be referred to in Travelers Brief of Argument; and
 - (e) such further and other relief as may be sought by Travelers and the Court may deem just and appropriate.

Grounds for Making this Application:

2. All capitalized terms used herein that are not otherwise defined, have the meaning ascribed to them in Bench Brief of Travelers, filed concurrently herewith (the “**Brief**”).
3. A more detailed description of the factual background relevant to this Application is found at Part II of the Brief, a summary of which follows.

Corporate Background

4. Mantle operates aggregate and gravel pits on public and private land pursuant to surface material leases and royalty agreements with respective landowners (the “**Aggregate Pits**”).
5. Mantle acquired its business and assets, including the Aggregate Pits, in the JMB/216 CCAA Proceedings in May 2021 pursuant to the Reorganization Transaction. Certain of the Aggregate Pits that Mantle acquired at that time were subject to environmental protection orders issued by Alberta Environment and Protected Areas (the “**AEP**”), which required JMB/216, and its current and former directors, including Mr. Levkulich, to address environmental end-of-life obligations associated with the aggregate and gravel pits (the “**2021 EPOs**”).
6. In the Reorganization Transaction, Mantle assumed the liabilities of the 2021 EPOs.
7. Mantle is a wholly owned subsidiary of RLF Canada Holdings Limited (“**RLF Canada**”), which in turn is a wholly-owned subsidiary of Resource Land Fund V LP (“**RLF V**”), a Delaware limited partnership and a private equity fund managed by RLH LLP (“**RLH**”, and together with RLF Canada, RLF V, RLF Canada Lender Limited (“**RLF Lender**”), the “**RLH Group of Companies**”).
8. RLF Lender is a secured creditor of Mantle and the Interim Financing lender in the Proposal Proceedings. RLF Lender is a wholly owned subsidiary of RLF V.
9. Mr. Levkulich holds senior positions and has significant decision-making authority in the RLH Group of Companies, as follows:
 - i) Mr. Levkulich is the principal of RLH. In that role, he is responsible for sourcing investments, negotiating acquisitions, and overseeing the development of those investments as a director of said investments. RLH is the fund manager and recommends those investments to certain funds, such as RLF V. RLH is the party that advises the funds on where it should invest the monies raised.
 - ii) Mr. Levkulich is also a limited partner of RLF V (i.e. he is an investor in the fund).

- iii) Mr. Levkulich is a director of RLF Canada, which is the parent company of Mantle and the investment vehicle for RLF V. There are no other officers or employees in RLF Canada.
- iv) Mr. Levkulich is the Chief Executive Officer, president, treasurer, and secretary of RLF Lender, which was created solely to provide funds from RLF V to Mantle.
- v) Mr. Levkulich is the director of Mantle.

Travelers' Security

- 10. Travelers has a first-ranking purchase-money security interest in respect of certain equipment owned by Mantle (the "**Equipment**") as security for funds advanced by Travelers to Mantle to fund the acquisition of the Equipment. As of July 25, 2023, Travelers is owed approximately \$1.1 million and is a primary stakeholder in these proceedings.

The Proposal Proceedings

- 11. Since the JMB/216 Reorganization, Mantle attempted, albeit unsuccessfully, to improve its management and operational practices, in an effort to secure long term supply contracts to produce the income necessary to support ongoing operations and allow it to repay its indebtedness, which were assumed in the JMB/216 Reorganization or incurred in the period following closing, including its environmental end-of-life obligations pursuant to the EPOs.
- 12. Consequently, Mantle is indebted to a number of creditors, which as of the date of the initiation of the Proposal Proceedings, amounts to more than \$16 million.
- 13. On July 14, 2023, Mantle filed a notice of intention to make a proposal pursuant to Division 1 of Part III of the *BIA*.
- 14. The Court has granted a series of extensions of the time for Mantle to file a proposal to its creditors pursuant to section 50.4 of the *BIA*, which, as of the date of filing this Application, expires on December 20, 2023.

The Proposed CCAA Proceedings

15. Mantle now seeks to restructure its affairs pursuant to the CCAA; however, Mantle has maintained throughout the Proposal Proceedings that it does not, nor did it ever, intend to restructure its affairs. Rather, Mantle has maintained that it intends to proceed with a liquidation of its business and assets after the remediation under 2021 EPOs is complete and prospective purchasers of the Active Pits are willing to accept the liabilities under the EPOs associated with the Active Pits, and the AEP approves the sales in question.
16. Mantle is not operating, has given up its offices, laid off its employees, and is only remaining as a functioning entity to deal with the Reclamation Liabilities, finalize the sale of the Active Pits, and distribute any available funds to its secured creditors.
17. Travelers does not believe that Mantle, its management or its directors are necessary or required to complete these steps and the proposed costs for Mantle to do so will significantly erode any amounts available to repay Mantle's secured creditors after completion of the Reclamation Liabilities.
18. Travelers has lost faith in the management of Mantle and questions the objectivity of its controlling executives who are faced with significant personal exposure in these proceedings and who, in Travelers view, have already used the Proposal Proceedings to leverage the security of other creditors to apportion the cost of the proceedings and the costs to complete the Reclamation Work pursuant to the Interim Financing super priority charge.
19. Mantle's secured creditors should not be required to bear the brunt of an additional and unnecessary layer of professional costs in addition to the extensive costs already incurred in the Proposal Proceedings, just to allow Mantle to remain in control of the CCAA Proceedings – particularly where the only actions left to be taken are the completion of the limited Minor Outstanding Reclamation Work, and the sale of Mantle's Active Pit assets before a distribution of proceeds to Mantle's creditors can be made.
20. Travelers believes that the necessary steps to be completed to allow for a distribution of assets and proceeds to the secured creditors with an interest in those proceeds can be easily and more cost effectively completed by the Proposed Monitor with enhanced powers.

21. The Proposed Monitor has consented to the assumption of the enhanced powers and duties set forth in the Enhanced Monitor Powers Order and such other powers as may be granted by this Honourable Court.
22. Any further and other grounds as counsel may advise and this Honourable Court may permit.

Material or Evidence to be relied on:

23. The Applicant intends to rely on the following materials:
 - (a) This Notice of Application;
 - (b) The Affidavit of Crystal Topilko, sworn on December 14, 2023, which attaches the:
 - (i) Affidavit of Byron Levkulich, sworn on August 7, 2023;
 - (ii) Supplemental Affidavit of Byron Levkulich, sworn on August 11, 2023;
 - (iii) Second Supplemental Affidavit of Byron Levkulich, sworn on August 14, 2023;
 - (iv) Third Affidavit of Byron Levkulich, sworn on September 15, 2023;
 - (v) Fourth Affidavit of Byron Levkulich, sworn on November 1, 2023;
 - (vi) Affidavit of Warren Miller, sworn on August 4, 2023;
 - (vii) Affidavit of Heather Dent, sworn on August 2023;
 - (viii) Supplement to the First Report of the Proposal Trustee, dated August 11, 2023;
 - (ix) Second Report of the Proposal Trustee, dated September 18, 2023;
 - (x) Third Report of the Proposal Trustee, dated November 3, 2023;
 - (xi) Transcript of Questioning on Affidavits of Byron Levkulich, held on November 28, 2023; and,

(xii) Responses to Undertakings of Mr. Levkulich from the Questioning on Affidavit on November 27, 2023.

- (c) Affidavit of Byron Levkulich, sworn on November 27, 2023, filed;
- (d) Transcript of Questioning on Affidavit of Byron Levkulich, held December 4, 2023; to be filed;
- (e) Fourth Report of the Proposal Trustee/Proposed Monitor, dated December 11, 2023; filed;
- (f) Bench Brief of Travelers, to be filed concurrently herewith;
- (g) such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

24. The Applicant intends to rely on the following rules:
- (a) the *Alberta Rules of Court*, AR 124/2010, as amended; and,
 - (b) such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

25. The Applicant intends to rely on the following Acts:
- (a) the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36; and
 - (b) such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any Irregularity Complained of or Objection Relied on:

26. There are no irregularities complained of or objections relied on.

How the Application is Proposed to be Heard or Considered:

27. Virtually by Webex, before the Honourable Justice Nixon (booked on the Commercial List).

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

Form of Enhanced Monitor Powers Order

(See attached)

COURT FILE NUMBER

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

Clerk's Stamp

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

AND IN THE MATTER OF THE COMPROMISE OF
ARRANGEMENT OF MANTLE MATERIALS GROUP
LTD.

APPLICANT

TRAVELERS CAPITAL CORP.

RESPONDENT

MANTLE MATERIALS GROUP, LTD.

DOCUMENT

ENHANCED MONITOR POWERS ORDER

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

MLT Aikins LLP
2100, 222-3rd Ave SW
Calgary, AB T2P 0B4
Attention: Ryan Zahara/Molly McIntosh
Tel: 403-693-5420/780-969-3501
Fax: 403-508-4349
File No. 160774/02

DATE ON WHICH ORDER WAS PRONOUNCED:

December 18, 2023

LOCATION WHERE ORDER WAS PRONOUNCED:

Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER:

The Honourable Justice Nixon (on
the Commercial List)

UPON the Application of Travelers Capital Corp. ("**Travelers**") seeking to enhance the powers of the proposed Monitor, FTI Consulting Canada ("**FTI**", and in such capacity, the "**Proposed Monitor**"); **AND UPON** having read the Notice of Application, the Affidavit of Byron Levkulich, sworn on November 27, 2023, the Affidavit of Crystal Topilko, sworn on December 14, 2023; the Transcript of Questioning of Byron Levkulich held on November 28, 2023, the Transcript of Questioning of Byron Levkulich held on December 4, 2023; and the Affidavit of Service of Crystal Topilko, to be filed; **AND UPON** noting the Originating Application of Mantle Materials Group, Ltd. ("**Mantle**") seeking an Initial Order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") and seeking to appoint the Proposed Monitor (the "**Initial Order**"); **AND UPON** the granting of the Initial Order; **AND UPON** noting the consent of the

Proposed Monitor; **AND UPON** hearing from counsel for Travelers, Mantle, FTI, and all other interested parties in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

Service

1. The time for service of the Application in respect of this Order (and all supporting materials filed by Travelers in support of the Application for this Order) is hereby abridged and service is deemed good, valid, timely, and sufficient.

Lifting of Stay

2. The stay of proceedings set forth in the Initial Order is hereby lifted for the express and limited purpose of permitting Travelers to bring the Application and to grant the relief hereunder, and shall otherwise remain in full force and effect.

Enhancement of Monitor's Powers

3. In addition to, and without limiting in any way, the powers afforded to the Monitor under the CCAA and the Initial Order and any other Order of this Honourable Court in these proceedings or under applicable law, the Monitor is hereby authorized and empowered to take any and all actions and steps to manage, operate and carry on Mantle, and preserve, protect, and exercise control over the Property (as that term is defined in the Initial Order) to the exclusion of the officers and directors of Mantle, including, without the limitation, the following:
 - a. to take any actions or steps the Monitor considers necessary or desirable to propose one or more Plans in respect of Mantle and to take any actions or steps to proceed with an orderly restructuring or liquidation in accordance with said Plans;
 - b. to cause Mantle to perform such functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist Mantle in dealing with the Property;
 - c. to conduct, supervise, direct and complete the sales process in respect of the Active Pits or one or more Court-approved sales and investor solicitation

processes (with prior Court approval) for portions of the Property or the Business, and procedures regarding the allocation and/or distribution of proceeds of any transactions;

- d. to exercise all remedies of Mantle in collecting monies owed or hereafter owing to Mantle and to enforce any security held by Mantle;
- e. to temporarily layoff or terminate the employment of any employees of Mantle;
- f. to engage advisors or consultants as the Monitor deems necessary or desirable to exercise its powers under the CCAA, the Initial Order, this Order, and other Order made in these proceedings;
- g. to take any and all corporate governance actions for Mantle;
- h. to execute, assign, issue, and endorse documents of whatever nature in respect of any Property and for any purpose pursuant to this Order;
- i. to oversee and direct the preparation and dissemination of financial and other information of Mantle in these proceedings, including cash flow statements;
- j. to hold and administer creditors' or shareholders' meetings for voting on Plans of Arrangements;
- k. to have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of Mantle, to the extent that is necessary to adequately assess Mantle's business and financial affairs and to perform its duties under this Order;
- l. filing of necessary tax returns on behalf of Mantle;
- m. to exercise any other rights which Mantle may have; and
- n. to perform such other duties or take any steps reasonably incidental to the exercise of these powers;

and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, including Mantle and without interference from any other person.

Monitor's Protections

4. The enhancement of the Monitor's powers as set forth in this Order, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the employment by the Monitor of any person in connection with its appointment and the performance of its powers and duties shall not constitute the Monitor as the employer, successor employer or related employer of the employees of Mantle within the meaning of any provincial, federal, or municipal legislation, or common law governing employment, pensions or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Monitor to liability to any individual arising from or relating to their previous employment by Mantle.
5. Without limiting the provisions of the Initial Order, all employees and consultants of Mantle shall remain employees and consultants of Mantle until such time as the Monitor, on Mantle's behalf, may terminate the employment of such employees or other contractual or consulting arrangements. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee-related liabilities or duties, including without limitation, wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.
6. The Monitor is not and shall not be or be deemed to be, a director, officer or employee of Mantle.
7. The Monitor shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Amended and Restated Initial Order and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor and the fulfilment of its duties or the carrying out of the provisions of this Order.
8. Mantle shall cooperate fully with the Monitor and any directions it may provide pursuant to this Order and shall provide such assistance as the Monitor may reasonably request from time to time to enable the Monitor to carry out its duties and powers as set out in the Initial Order, this Order, or any other Order of this Court under the CCAA or applicable law generally.

9. Nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of Mantle within the meaning of any relevant legislation. For greater certainty, any distributions to creditors of Mantle administered and implemented by the Monitor on behalf of Mantle will be deemed to have been made by Mantle itself.
10. The power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of Mantle with respect to such matters and, in the event of a conflict between the terms of this Order and those of the Initial Order or any other Order of this Court, the provisions of this Order shall govern.
11. The Monitor will provide regular reports and updates to the Court from time to time with respect to its performance, or the exercise of, its additional powers, duties, rights and obligations as provided and set out in this Order.
12. The Monitor is at liberty and are hereby authorized and empowered to apply to any Court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for advice, assistance and direction as may be necessary to give full force and effect to, and in carrying out the terms of, this Order.
13. Travelers shall be awarded its costs of the Application on a solicitor-client basis.

Justice D.B. Nixon
of the Court of King's Bench of Alberta