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IN THE MATTER OF 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:

**BENCH BRIEF OF THE APPLICANT**

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## I. OVERVIEW

1. This Brief is submitted on behalf of Travelers Capital Corp., formerly Travelers Restructuring Capital inc. (the “**Lender**” or “**Travelers**”):
  - a. in response to the Application of Mantle Materials Group, Ltd. (“**Mantle**” or the “**Debtor**”) seeking to convert the Notice of Intention to make a proposal pursuant to Division I of Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), filed on July 14, 2023 (the “**Proposal Proceedings**”) and for an initial order pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) (the “**Conversion Application**”); and
  - b. in the event the Court grants the Conversion Application (the “**Initial Order**”), in support of Travelers’ application to enhance the powers of FTI Consulting Canada Inc. (“**FTI**”) in its capacity as proposed monitor (the “**Monitor**”) under the Initial Order.
2. Mantle has consistently advised this Court that its insolvency proceedings were for the stated purpose of liquidating its assets and completing any reclamation and remediation obligations associated with its aggregate pits. There remain very few items to be completed by Mantle within its insolvency proceedings – finalizing the sale of the active aggregate pits, completion of remaining remediation obligations on the inactive pits and a cost allocation and proposed distribution to the secured creditors.
3. Mantle, in its evidence and materials filed in its insolvency proceedings to date has acknowledged that there is no restructuring that will occur and there is only some form of an “administration process” remaining to be done in order to ensure the outstanding matters are completed. Mantle is no longer continuing its operations, it is laying off its remaining employees, will not restart its operations in the spring, and any of the outstanding matters to be completed by Mantle are or can be done by consultants.
4. The proposed costs of having this completed through a CCAA proceeding led by the Debtor will likely significantly erode any amounts that may be available to Travelers (and other secured creditors) to satisfy the amounts owing to it under its security after completion of the remediation and reclamation obligations. Travelers acknowledges that Mantle needs to continue in insolvency proceedings in some form in order to complete

those few outstanding items, but believes this is best accomplished by the Monitor's powers being enhanced to complete these steps at a significantly reduced cost.

5. Mantle, in its evidence filed before the Court, has failed to provide any sufficient basis upon which the Court could reasonably conclude that it is in the best interests of stakeholders to allow the management of Mantle additional time to complete these outstanding matters.
6. Travelers has lost faith in the management of Mantle and seriously questions the objectivity of its controlling executives who are faced with significant personal exposure in these proceedings and who, in Travelers' view, have been already used the mechanism of the BIA proposal proceedings to leverage the security of other creditors to bear the costs of the proceedings and to complete the Remediation Work, pursuant to mechanism of the the Interim Financing super priority charge.
7. Travelers believes that Mantle's continued involvement in these insolvency proceedings as a debtor will only serve to further erode the assets available for distribution to Mantle's secured creditors.
8. Mantle's 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, to enable Mantle to remain in control of the CCAA Proceedings when the only actions left to be taken are the completion of limited Reclamation Work (defined below), the majority of which has already been completed and the completion of the sale of Mantle's assets before a distribution of proceeds to Mantle's creditors can be made.
9. It is more appropriate and in the best interest of all stakeholders to enhance the powers of FTI, in its capacity as Monitor under the Initial Order, to control Mantle's affairs and to oversee the remaining steps to complete an efficient and cost effective winding down and liquidation of Mantle's business and its assets, including in order to monetize any remaining assets.

## II. FACTUAL BACKGROUND

### A. Inception of Mantle Materials Group and the Issuance of the EPOs

10. Mantle acquired its business and assets in the JMB/216 CCAA Proceedings (defined below) in May 2021, the particulars of which are described in further detail below.
11. Mantle at the time it acquired its business and assets, knew there was significant issues with the business model, including increased costs of trucking aggregate to customers due to the location and distance of the aggregate pits from prospective customers and no on-going long-term supply contracts (except for 1) that would generate revenue for Mantle. The business was being restarted from effectively a complete stop in the Spring of 2021.<sup>1</sup>
12. RLF Canada Holdings Limited (“**RLF**”) is a Colorado corporation and a wholly-owned subsidiary of Resource Land V, LP (“**RLF V**”), a Delaware limited partnership, which is an investment fund managed by RLH LLP (“**RLH**”).<sup>2</sup>
13. RLH primarily invests in natural resource and real estate investments in agriculture, forestry, ecological credits and water rights in the United States.<sup>3</sup>
14. Aaron Patsch and Joe Leninger are the sole partners of RLH and Byron Levkulich is the sole principal of RLH.<sup>4</sup> In his role as principal, Mr. Levkulich is responsible for sourcing, negotiating, and overseeing investments made by RLH, including its investment in JMB (defined below) and Mantle.<sup>5</sup>
15. RLF is the investment vehicle for RLF V’s investments in Canada.<sup>6</sup> Byron Levkulich is the director of RLF.<sup>7</sup>

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<sup>1</sup> Transcript of Questioning on Affidavit of Byron Levkulich, held on December 4, 2023 found at Exhibit P to the Affidavit of Crystal Topilko, sworn December 14, 2023 (the “**Topilko Affidavit**”) (the “**Second Cross-Examination**”) at pp 25 to 27; see also Affidavit of Byron Levkulich, sworn on August 7, 2023 in the Proposal Proceedings found at Exhibit A of the Topilko Affidavit (“**First Affidavit**”) at para 17.

<sup>2</sup>First Affidavit at para 8; Affidavit of Byron Levkulich, sworn on November 27, 2023 (“**Fifth Affidavit**”) at para 7; Transcript of Questioning on Affidavits of Byron Levkulich, held on November 27, 2023, found at Exhibit L of the Topilko Affidavit (the “**First Cross-Examination**”) at 23:11 to 23:25.

<sup>3</sup> First Cross-Examination at 16:9 to 17:1.

<sup>4</sup> First Cross-Examination at 12:25 to 13:25.

<sup>5</sup> First Cross-Examination at 14:1 to 14:25.

<sup>6</sup> First Cross-Examination at 23:11 to 25; Second Cross-Examination at 9:14 to 21.

<sup>7</sup> First Cross-Examination at 23:11 to 25; Second Cross-Examination at 9:14 to 21.

16. In or around November 2018, RLF became an indirect but related company of JMB Crushing Systems Inc. (“**JMB**”) through Canadian Aggregate Resources Corporation (“**CARC**”).<sup>8</sup> Mr. Levkulich is a director of CARC.<sup>9</sup>
17. On May 1, 2020, JMB, and its wholly owned subsidiary, 2161889 Alberta Ltd. (“**216**”, and together with JMB, “**JMB/216**”) initiated proceedings (the “**JMB/216 CCAA Proceedings**”) pursuant to the CCAA. <sup>10</sup> FTI was appointed as their monitor.<sup>11</sup> At that time, Byron Levkulich and Aaron Patsch were the sole directors of JMB.<sup>12</sup>
18. Following the commencement of the JMB/216 CCAA Proceedings, Alberta Environment and Protected Areas (the “**AEP**”) issued environmental protection orders requiring JMB/216, and its current and former directors, including Mr. Patsch and Mr. Levkulich, to personally address environmental obligations associated with certain aggregate and gravel pits it held interests in (the “**2021 EPOs**”).<sup>13</sup>
19. In order to protect its investment in JMB/216, RLF incorporated 1257568 BC Ltd., which subsequently became Mantle Materials Group Ltd., a registered British Columbia corporation (“**Mantle BC**”) and submitted a bid for the business of JMB/216, certain of its aggregate and gravel pits (the “**Aggregate Pits**”) and other assets.<sup>14</sup> JMB, 216, and Mantle BC were amalgamated to form Mantle and Mantle acquired the Aggregate Pits, including all liabilities pursuant to the the 2021 EPOs (the “**Reclamation Liabilities**”) and certain other assets of JMB/216 pursuant to a series of agreements which were completed on May 1, 2021 (the “**Reorganization Transaction**”).<sup>15</sup>
20. Mantle is wholly owned by RLF. <sup>16</sup> Mr. Levkulich and Mr. Patsch are the sole directors of Mantle, and have been since its inception in 2021.<sup>17</sup>

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<sup>8</sup> First Affidavit at para 1; First Cross-Examination at 19:22 to 24.

<sup>9</sup> First Cross-Examination at 25:21 to 25:25.

<sup>10</sup> First Affidavit at para 12.

<sup>11</sup> First Affidavit at para 12.

<sup>12</sup> First Cross-Examination at 25:7 to 15.

<sup>13</sup> First Affidavit at para 13; Supplemental Affidavit of Byron Levkulich, sworn on August 11, 2023, found at Exhibit B to the Topilko Affidavit (the “**Second Affidavit**”) at para 13 and Exhibit D; Fifth Affidavit at para 26.

<sup>14</sup> First Affidavit at para 15; Fifth Affidavit at para 8, 25.

<sup>15</sup> Fifth Affidavit at para 25.

<sup>16</sup> First Affidavit at Exhibit A; Fifth Affidavit at para 9.

<sup>17</sup> First Affidavit at Exhibit A; First Cross-Examination at 10:7-14.

## **B. Travelers' Equipment Loan and PMSI**

21. In or around September 2021, Travelers was approached by Mantle about potential equipment financing following the Reorganization Transaction.<sup>18</sup>
22. Pursuant to a Loan and Security Agreement, dated October 8, 2021, as amended on October 15, 2021, (the "**Loan Agreement**"), Travelers agreed to loan to Mantle \$1,700,000 for the acquisition of certain equipment (the "**Equipment**").<sup>19</sup>
23. As security for the funds advanced to Mantle pursuant to the Loan Agreement, Mantle granted Travelers a purchase money security interest over the Equipment, which was registered at the Alberta Personal Property Registry on October 17, 2021 (the "**Security**").<sup>20</sup>

## **C. The Aggregate Pits and the Reclamation Work**

24. The Aggregate Pits consist of:
  - a. 14 aggregate and gravel pits on public land pursuant to surface material leases issued by AEP; and
  - b. 10 aggregate and gravel pits on private land pursuant to royalty agreements with the respective landowner.<sup>21</sup>
25. Of the 24 Aggregate Pits, nine are, or were at the initiation of the Proposal Proceedings, being operated (collectively, the "**Active Pits**"), ten are no longer operational (collectively, the "**Inactive Pits**"), and five were never opened (the "**Unopened Lands**").<sup>22</sup>
26. Following the Reorganization Transaction, Mantle negotiated reclamation plans with the AEP in order to address the Reclamation Liabilities (the "**Reclamation Plans**").<sup>23</sup>
27. The 2021 EPOs and the Reclamation Plans, relate to the following Aggregate Pits:
  - a. MacDonald;

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<sup>18</sup> Affidavit of Warren Miller, sworn on August 4, 2023, found at Exhibit F of the Topilko Affidavit (the "**Miller Affidavit**") at para 3.

<sup>19</sup> Miller Affidavit at para 4; First Affidavit at Exhibit C.

<sup>20</sup> Miller Affidavit at para 4.

<sup>21</sup> First Affidavit at para 10; Affidavit of Byron Levkulich, sworn on November 1, found at Exhibit E (the "**Fourth Affidavit**") at para 7; Fifth Affidavit at para 11.

<sup>22</sup> Fourth Affidavit at para 8.

<sup>23</sup> First Affidavit at para 16; Fifth Affidavit at para 29.

- b. Megley;
- c. Hoye/Kucy;
- d. Havener;
- e. Buksha;
- f. O’Kane;
- g. SML 060060;
- h. SML 930040;
- i. SML 980116; and
- j. SML 120027.<sup>24</sup>

28. As outlined in Mr. Levkulich’s Affidavit sworn on November 27, 2023 (the “**Fifth Affidavit**”):

The work required to address the Reclamation Liabilities associated with the Aggregate Pits is carried out over several years. The majority of the Reclamation Work is done at the outset and includes removal of any marketable aggregate, rough grading and contouring the inactive pit to tie into the surrounding landscape, elimination of debris, and placement and seeding of topsoil. Once the Major Reclamation Work has been completed, there is a two year period (the Assessment Period) during which the soil stability and success of seeding is assessed. If any issues arise in that two-year period, the operator is required to carry out any remaining work to address those issues (at para 28). Once all reclamation work has been completed, Mantle can apply for a reclamation certificate under the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, as amended.<sup>25</sup>

29. Mantle has been carrying out remediation and reclamation work pursuant to the 2021 EPOs and the Remediation Plans (the “**Remediation Work**”) on both the Inactive Pits and the Active Pits since 2021 and continued that work throughout the Proposal Proceedings.<sup>26</sup>

30. Mantle between May of 2021 and October of 2022 only expended approximately \$630,000 on completing the Remediation Work.<sup>27</sup>

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<sup>24</sup> Fifth Affidavit at para 29.

<sup>25</sup> Fifth Affidavit at para 28.

<sup>26</sup> First Affidavit at para 40, Fourth Affidavit at para 10 and 13; Fifth Affidavit at para 31; First Cross-Examination at 28:25 to 29:10.

<sup>27</sup> Fifth Affidavit at para 37.



31. The Remediation Work has been, and will continue to be, conducted by environmental consultants hired by Mantle.<sup>28</sup> In particular:
- a. CPP Environmental was retained by Mantle to design the Reclamation Plans in accordance with applicable regulations;
  - b. Location Cats Ltd. was retained by Mantle to carry out the Reclamation Work; and
  - c. An environmental consultant, such as CPP Environmental, will be retained to monitor the Remediation Work during the assessment period.<sup>29</sup>
32. As at July 23, 2023, Mantle estimates the costs associated with the Reclamation Work to be follows:
- a. \$1,678,308 in respect of the Inactive Pits (most of which has been completed during the Proposal Proceedings);<sup>30</sup> and
  - b. \$1,874,872 in respect of the Active Pits.<sup>31</sup>
33. In respect of the estimated cost for the Reclamation Work for the Inactive Pits, that does not include costs for work that was completed or occurred after June 30, 2023.<sup>32</sup>
34. Mantle has posted security in respect of the EPOs with the AEP in the aggregate amount of \$1,057,971.24 (the “**AEP Security**”), which is comprised of:
- a. \$807,476 in respect of the Active Pits;
  - b. \$116,363 in respect of the Inactive Pits;
  - c. \$116,890 in respect of the Unopened Lands; and
  - d. \$17,232 in respect of vacant land.<sup>33</sup>
35. The majority of the Reclamation Work that has to be completed before the two year assessment period has now been completed (the “**Completed Reclamation Work**”), with the exception of the following Reclamation Work that is outstanding.

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<sup>28</sup> First Cross-Examination at 34:6 to 36:16.

<sup>29</sup> First Cross-Examination at 34:6 to 36:16.

<sup>30</sup> First Affidavit at para 40; Fourth Affidavit at para 8; Fifth Affidavit at para 30.

<sup>31</sup> Fourth Affidavit at para 8; Fifth Affidavit at para 30.

<sup>32</sup> Second Cross-Examination at 74:23 to 26.

<sup>33</sup> First Affidavit at para 40; Fourth Affidavit at para 8; Fifth Affidavit at para 30.

- a. In respect of the MacDonald Pit:
  - i. Travelers believes Mantle only has to complete remaining recontouring activities including disposal of oversize rocks, and placement of topsoil, (but confirmation of this remains the subject of an outstanding undertaking of Mr. Levkulich from the December 4, 2023 questioning); and
  - ii. assess soil stability after Spring thaw and seed topsoil with pasture mix.<sup>34</sup>
- b. In respect of the Hoye/Kucy Pit:
  - i. Assess soil stability and seed topsoil.<sup>35</sup>
- c. In respect of the SML 060060 Pit:
  - i. complete remediation of recontouring of the constructed waterbody, final fill, final recontouring, and final topsoil placement.<sup>36</sup>

(collectively, the “**Minor Outstanding Reclamation Work**”).

- 36. Mantle, through the Environmental Consultants, anticipates completing the Minor Outstanding Reclamation Work in Spring 2024.<sup>37</sup>
- 37. The AEP has advised Mantle that it is not prepared to release any of the AEP Security and it is not clear when any of that AEP Security will be released.<sup>38</sup>

#### **D. The Proposal Proceedings**

- 38. Since the Reorganization Transaction, 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 pay its indebtedness, which were assumed in the Reorganization Transaction or incurred in the period following closing.<sup>39</sup>

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<sup>34</sup> Response to Undertaking 5 from First Cross-Examination at section 2.4, found at Exhibit N of the Topilko Affidavit (“**UT 5**”).

<sup>35</sup> UT 5 at section 4.3.

<sup>36</sup> UT 5 at section 8.3; Second Cross-Examination at 42:17 to 43:20.

<sup>37</sup> UT 5.

<sup>38</sup> Second Cross-Examination at 107:25 to 108:2.

<sup>39</sup> First Affidavit at para 17 and 19.

39. Consequently, Mantle is indebted to a number of creditors, which as of the date of the initiation of the Proposal Proceedings, amounted to more than \$16 million (which are described in further detail below at paragraphs 55 and 56).<sup>40</sup>
40. In light of the foregoing, Mantle filed a notice of intention to initiate the Proposal Proceedings.
41. On August 8, 2023, Mantle brought an application in the Proposal Proceedings seeking, among other things, approval of interim financing to be issued by RLF Canada Lender Limited (“**RLF Lender**”) to fund the Reclamation Work (the “**Interim Financing**”) and granting RLF Lender, as lender, a first-ranking priority position ahead of Mantle’s existing creditors, including Travelers.
42. RLF Lender is a wholly owned subsidiary of RLF V.<sup>41</sup> Mr. Levkulich is the Chief Executive Officer, President, Treasurer and Secretary of RLF Lender.<sup>42</sup>
43. Notwithstanding the uncertainty of RLF Lender in respect of Mantle’s ability to ultimately repay the Interim Financing, and the inability of Mantle to secure interim financing from other sources, RLF Lender was willing to provide the Interim Financing for the primary purpose of funding the Reclamation Work.<sup>43</sup> However, RLF Lender was only willing to advance the Interim Financing if it was given a super priority charge in respect of any indebtedness owing to it pursuant to the Interim Financing over Mantle’s pre-existing secured creditors and over the Travelers Equipment (which it did not previously have security on).<sup>44</sup>
44. Pursuant to the Order of the Honourable Justice Feasby, granted on August 15, 2023 and amended on August 28, 2023 (collectively, the “**Feasby Decision**”), Justice Feasby approved the priority ranking of various restructuring charges including the Interim Financing (the “**Restructuring Charges**”) and declared that Travelers’ Security could only be realized on after the Remediation Work is complete.<sup>45</sup>

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<sup>40</sup> First Affidavit at para 39.

<sup>41</sup> First Cross-Examination at 25:1 to 6.

<sup>42</sup> Second Cross-Examination at 18:24 to 19:11.

<sup>43</sup> First Affidavit at para 56(b); First Cross-Examination at 61:11 to 62:14.

<sup>44</sup> First Affidavit at para 66; First Cross-Examination at 61:1 to 61:10.

<sup>45</sup> [Re Mantle Materials Group Ltd, 2023 ABKB 488](#) at TAB 4 of the Book of Authorities, and aff’d on appeal in [Mantle Materials Group Ltd v Travelers Capital Corp, 2023 ABCA 302](#), at TAB 5 of the Book of Authorities.

45. RLF Lender advanced the Interim Financing after approval of the interim financing order on August 15, 2023 to Mantle. RLF Lender receives its funds from RLF V.<sup>46</sup>

**(1) Sales Solicitation Process in respect of the Active Pits**

46. Mantle and FTI, in its capacity as the Proposal Trustee in the Proposal Proceedings, have developed and implemented a sales solicitation process in respect of the Active pits (the “SSP”). The deadline to submit letters of intent or expressions of interest was October 25, 2023.<sup>47</sup>

47. At the bid deadline, Mantle received various offers to purchase all of the Active Pits and is currently negotiating with the interested parties to formalize the terms of the offers.<sup>48</sup>

48. Travelers understands that several parties have submitted bids within the SSP and it is Mantle’s intention to sell the Active Pits on the condition that purchasers thereof assume the applicable Reclamation Liabilities associated with the purchased Active Pit(s).<sup>49</sup>

49. As of the date of filing this Brief, Mantle has not submitted an application for Court approval of a sales transaction as a result the SSP. [REDACTED]

50. [REDACTED] However, to date, the AEP has refused to release any of the security deposits held on behalf of Mantle, even when the active pit associated with such security deposits has been sold.<sup>52</sup>

51. Travelers believes that if the Active Pits are sold through the sales process, any remaining aggregate inventory that had been mined during 2023 would, in the normal course, also be sold with the Active Pits (and thus not be available to generate any further receivables).

<sup>46</sup> First Cross-Examination at 64:16 to 64:23.  
<sup>47</sup> Fourth Affidavit at para 21; Fourth Report of the Proposal Trustee and the Proposed Monitor, dated December 11, 2023 (“**Fourth Report**”) at para 26.  
<sup>48</sup> Fourth Report at paras 27 to 28.  
<sup>49</sup> Fourth Affidavit at para 21 and 27; Fourth Report at para 24.  
<sup>50</sup> Confidential Transcript of Questioning of Byron Levkulich, held on November 27, 2023 at 8:9 to 12. **REDACTED**  
<sup>51</sup> **REDACTED**  
<sup>52</sup> Second Cross-Examination at 107:17 to 19.

Travelers is waiting confirmation of this point as it was an undertaking of Mr. Levkulich's that has not been responded to as of the date of this Brief of Argument.

**(2) Ritchie Bros. Auction of Mantle's Equipment**

- 52. On November 1, 2023, Mantle brought an Application seeking, among other things, approval of a contract of auction between it and Ritchie Bros. Auctioneers (Canada) Ltd dated October 31, 2023, providing for the auction and sale of Mantle's equipment, including the Equipment subject to Travelers' Security (the "**Auction Agreement**").
- 53. All of Mantle's remaining equipment that was used in its operations is being sold pursuant to the Auction Agreement.<sup>53</sup>
- 54. The Auction was scheduled to take place on December 13, 2023.<sup>54</sup>

**E. Mantle's Liabilities to Creditors and Available Assets**

- 55. Mantle's liabilities subject to security and/or Court-ordered priority charges arising from the Proposal Proceedings can be summarized as follows:

Estimated Reclamation Liabilities in respect of Inactive Pits	\$0 (\$1,678,308 <sup>55</sup> assumed to be funded through Interim Financing Charge and Accounts Receivable, may be some "modest amount" needed to complete)
Estimated Reclamation Liabilities in respect of Active Pits	\$1,988,585 <sup>56</sup>
Administration Charges incurred in respect of the Proposal Proceedings	\$425,000 (assumed to be funded through Interim Financing Charge and Accounts Receivable) <sup>57</sup>
Interim Financing Charge	\$2,200,000 <sup>58</sup>

<sup>53</sup> First Cross-Examination at 88:5 to 12.

<sup>54</sup> Fourth Report at paras 30 to 32.

<sup>55</sup> First Report of the Proposal Trustee, dated August 4, 2023 (the "**First Report**") at para 28(a).

<sup>56</sup> First Affidavit at para 40.

<sup>57</sup> Second Report at para 22; Third Report of the Proposal Trustee, dated November 3, 2023 (the "**Third Report**") at para 50; Fourth Report at para 52, 59(d) and Appendix C.

<sup>58</sup> Fourth Report at para 56 and Appendix C.

Travelers in respect of the Loan Agreement	\$1,077,618.52 plus interest and costs <sup>59</sup>
Pathward National Association (“ <b>Pathward</b> ”) in respect of the Pathward Loan Agreement (as defined in the First Affidavit)	\$474,369.88 <sup>60</sup>
Fiera pursuant to the Fiera Loan Agreement (as defined in the First Affidavit)	\$8,203,810.23 <sup>61</sup>
RLF Canada Lender Limited (“ <b>RLF Lender</b> ”) pursuant to the RLF Debenture (as defined in the First Affidavit)	\$1,774,190.62 <sup>62</sup>
ATB Financial pursuant to the ATB Agreement (as defined in the First Affidavit)	\$16,419.77 <sup>63</sup>
<b>TOTAL</b>	<b>\$16,159,994.02</b>

56. Mantle’s assets available for a future distribution amongst Mantle’s secured creditors can be summarized as follows:

AEP Deposit	\$1,057,961 <sup>64</sup>
Estimated Cash on Hand	\$1,480,726 (as of March 1, 2024) <sup>65</sup>
Mantle’s Equipment	\$1,588,800 <sup>66</sup>
Accounts Receivables	\$1,515,601 (as of March 1, 2024) <sup>67</sup>
Active Pits	\$0 (Mantle has ascribed at least a nil value to these) <sup>68</sup>

<sup>59</sup> Fifth Affidavit at para 50.

<sup>60</sup> First Affidavit at paras 25, 39(a)(iv), and 47; Fifth Affidavit at para 50.

<sup>61</sup> First Affidavit at paras 21, 39(a)(i) and 44; Fifth Affidavit at para 50.

<sup>62</sup> First Affidavit at paras 26, 27, 39(a)(v), and 48-50; Fifth Affidavit at para 50.

<sup>63</sup> First Affidavit at paras 28, 29 and 39(a)(ii); Fifth Affidavit at para 50.

<sup>64</sup> First Affidavit at paras 38(e),(f), and 41; First Report at para 32.

<sup>65</sup> Fourth Report at Appendix A.

<sup>66</sup> Third Report, Appendix A.

<sup>67</sup> Second Report at Appendix A – Cash Flows.

<sup>68</sup> First Report at para 33; Fifth Affidavit at para 49.

Gravel Inventory	\$0 (assumed to be worth \$0 as sold with Active Pits)
1/3 Ownership in Atlas Aggregates Inc.	No evidence has been presented to date on the estimated value of liquidation of the shares.
<b>TOTAL</b>	<b>\$5,643,088</b>

57. In summary, Mantle’s outstanding secured liabilities far exceed the remaining value of its assets and both Mantle and the Monitor has indicated that there may not even be sufficient value to make **any** distribution to Mantle’s secured creditors after the Reclamation Liabilities are satisfied and the Interim Financing Facility is repaid.<sup>69</sup>
58. Mantle, excluding the proceeds to be realized from the Travelers Equipment, also does not even have sufficient accounts receivable or other assets to fully repay the Interim Financing Facility at the end of the current cash flow forecast. There is likely to be a significant shortfall of funds and there are no further assets available to generate any additional funds. There is also no certainty as to if or when the AEP will release any amounts held as security for the Active Pits or Inactive Pits.
59. The current cash flow forecast in the Proposed Monitor’s Fourth Report also does not contain any estimated or forecast amounts to complete the Minor Outstanding Reclamation Work.<sup>70</sup> Mr. Levkulich has described this go forward cost as being “relatively modest” for the Inactive Pits.<sup>71</sup>

**F. The CCAA Proceedings**

60. Mantle now seeks an Initial Order pursuant to the CCAA in order to: (i) address its Reclamation Liabilities; (ii) sell its assets in a commercially reasonable manner; and (iii) upon completion of the Reclamation Work and the satisfaction of the Reclamation Liabilities, make a distribution to its creditors.<sup>72</sup>

<sup>69</sup> Cross-Examination at 89:24 to 91:4; 91:5 to 91:10. The Monitor’s Report at paragraph 44

<sup>70</sup> Fourth Report at Appendix A.

<sup>71</sup> Fifth Affidavit at para 93; Fourth Report at Appendix A.]

<sup>72</sup> Fifth Affidavit at para 62; First Cross-Examination at 92:1 to 23; 93:7 to 94:12; 94:14 to 95:7.

61. Mantle's proposed process in the CCAA Proceedings contemplates a liquidation of Mantle, which is consistent with Mantle's intentions and conduct throughout the Proposal Proceedings. For example:
- a. In June 2023, Mantle's directors made the decision that Mantle's business was not economically viable.<sup>73</sup>
  - b. Mantle has maintained throughout the Proposal Proceedings that they were gradually winding down operations.<sup>74</sup>
  - c. Mantle's operational focus has been to sell as much of its produced inventory as possible to maximize cash receipts, which Mantle expects to complete prior to the end of 2023.<sup>75</sup>
  - d. As of November 27, 2023, Mantle has laid off its seasonal employees and does not intend to restart operations in the Spring.<sup>76</sup>
  - e. Mantle has, or will in the course of the Auction, have sold all of its equipment necessary to operate the Aggregate Pits.<sup>77</sup>
62. Mantle's "administration process" now being proposed under the CCAA does not have any benefit to stakeholders in allowing Mantle to continue to manage its insolvency proceedings. Further, Mantle has also provided evidence that it may undertake unnecessary, costly, and overly complicated steps within the CCAA proceedings (reverse vesting order and plan of arrangement) that provide no benefit to the only remaining stakeholders who hold a financial interest in Mantle.

### III. ISSUES

63. In the event that the Court grants the Initial Order, the primary issue for this Court to determine on the within Application is whether FTI, in its capacity as Monitor of Mantle, ought to have increased powers and authority in respect of the CCAA Proceedings and Mantle should no longer continue to manage those CCAA Proceedings.

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<sup>73</sup> Second Cross-Examination at 22:27 to 23:3.

<sup>74</sup> Fifth Affidavit at para 75; First Affidavit at paras 21, 34 and 53; Second Supplemental Affidavit of Byron Levkulich, sworn on August 14, 2023 (the "**Third Affidavit**") at para 12 to 13; Fourth Affidavit at para 12.

<sup>75</sup> Fourth Report at paras 17 to 18.

<sup>76</sup> First Cross-Examination at 87:3 to 87:9; 87:19 to 23.

<sup>77</sup> First Cross-Examination at 88:5 to 12; Fourth Report at para 30.



## IV. LAW AND ARGUMENT

### A. The Court's Authority to Enhance the Monitor's Powers

64. For the reasons that follow, Travelers seeks to enhance the powers of FTI, in its capacity as the proposed Monitor of Mantle, for the benefit of Mantle's secured creditors.
65. The Court is possessed of inherent and equitable jurisdiction in a CCAA proceeding to make any order that it deems appropriate in order to serve the objectives of the legislation, which objectives include:
- a. providing for timely, efficient and impartial resolution of a debtor's insolvency;
  - b. preserving and maximizing the value of a debtor's assets;
  - c. ensuring fair and equitable treatment of the claims against a debtor;
  - d. protecting the public interest; and
  - e. balancing the costs and benefits of restructuring or liquidating the debtor company.<sup>78</sup>
66. Canadian courts are afforded broad discretion, pursuant to section 11 of the CCAA, to make a variety of orders that respond, in real time, to the circumstances of each case as well as contemporary business and social needs.<sup>79</sup>
67. The minimum powers of the monitor in CCAA proceedings are set out in section 23 of the Act and the Court is empowered to increase the monitor's powers pursuant to section 23(1)(k) of the CCAA which states that "[t]he monitor shall [...] carry out any other functions in relation to the company that the court may direct."<sup>80</sup>
68. The Court has a broad authority to grant additional powers provided that it exercises its authority in a "manner consistent with and directed towards the attainment of the objectives of the CCAA",<sup>81</sup> which includes maximizing creditor recovery, preservation of

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<sup>78</sup> [9354-9186 Callidus Corp. 2020 SCC 10](#) ("*Callidus*") at TAB 6 of the Book of Authorities at para 40.

<sup>79</sup> *Callidus* at para 48; citing with approval [Century Services Inc v Canada \(Attorney General\), 2010 SCC 60](#) ("*Century Services*") at TAB 7 of the Book of Authorities at para 58.

<sup>80</sup> CCAA, s. 23.

<sup>81</sup> [Arrangement relative a 9323-7055 Quebec Inc \(Aquadis International Inc.\), 2020 QCCA 659](#) at TAB 8 of the Book of Authorities at para 61 to 62.

going-concern value where possible, preservation of jobs and communities affected by distress, and enhancement of the credit system generally.<sup>82</sup>

69. As stated by the Ontario Court of Appeal in *Essar Global*, “the flexibility inherent in the restructuring process permits a broad balancing of these objectives and the multiple stakeholder interests engaged when a corporation faces insolvency.”<sup>83</sup>
70. Canadian Courts have expanded a monitor’s powers in CCAA proceedings as a means of providing a flexible and creative solution in situations where the cost of maintaining directors and management amounted to an unnecessary burden and expense on the debtor company, to the prejudice of stakeholders, or where creditors lost faith in management to create and execute a restructuring of the insolvent corporation:
- a. In the CCAA proceedings of *Groupe Selection Inc., et al*, 2022 QCCS, the issue before the Court was whether the development and implementation of the insolvent company’s restructuring should be left to the debtor’s executives and management who no longer had the confidence of the major secured creditors (a syndicate of banks, led by National Bank of Canada (the “**Syndicate**”)) and key business partners, or whether it should be left to the monitor proposed by the Syndicate with enhanced powers.<sup>84</sup> The Court appointed the monitor proposed by the Syndicate and granted the monitor the enhanced powers required to control the insolvent company’s affairs and to implement the proposed restructuring.<sup>85</sup>
  - b. In *Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 1746, the Court enhanced the monitor’s powers to implement a claims process and to take control of certain of the insolvent company’s financial affairs in light of an impending sale of the insolvent company’s major assets.<sup>86</sup> In doing so, the Court also ordered that certain soon-to-be former employees remain accessible to the monitor to allow it to perform its obligations pursuant to a transition services agreement.<sup>87</sup>

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<sup>82</sup> [Ernst & Young Inc v Essar Global Fund Limited, 2017 ONCA 1014](#) at TAB 9 of the Book of Authorities at paras 103.

<sup>83</sup> *ibid.*

<sup>84</sup> In the CCAA proceedings of *Groupe Selection Inc., et al*, 2022 QCCS, Court File No. 500-11-061657-223, [ement Sur Demandes Pour L’Emission d’une Ordonnance Initiale et d’une Ordonnance Initiale Amendee et Reformulee \(dated November 21, 2022\)](#) (in French); [Judgment on Applications for an Initial Order and an Amended and Restated Initial Order \(dated November 21, 2022\)](#). (Unofficial Translation) at TAB 11 of the Book of Authorities.

<sup>85</sup> *ibid* at paras 158 to 160.

<sup>86</sup> [Walter Energy Canada Holdings Inc., Re, 2016 BCSC 1746](#) at para 95 at TAB 10 of Book of Authorities.

<sup>87</sup> *ibid* at para 83.

- c. In the CCAA proceedings of *Re Oilsands Quest Inc*, 2012 ABQB, and similarly in *Re Poseidon Concepts Corp*, 2013 ABQB, and *Re Sanjel Group of Companies*, 2016 ABQB, the Court enhanced the monitor's powers broadly to allow the monitor to control the insolvent company's affairs and to implement the proposed restructuring.<sup>88</sup>
- d. In the JMB/216 CCAA Proceedings, the Court enhanced FTI's powers, as monitor, to allow FTI to complete the restructuring of JMB/216.<sup>89</sup>

## **B. The Court Ought to Enhance the Monitor's Powers in the Circumstances**

71. Travelers submits that, if the Initial Order is granted, it is appropriate in the circumstances to grant the Monitor all powers necessary to control Mantle's affairs and complete the few remaining steps in the liquidation process that Mantle has already been pursuing for the last 5 months.
72. Mantle has maintained throughout the Proposal Proceedings that it does not, nor did it ever, intend to restructure its affairs.<sup>90</sup> Rather, Mantle has maintained that it intended to proceed with a liquidation of its business and assets after the Environmental Reclamation Obligations are completed or prospective purchasers of the Active Pits are willing to accept the Environmental Reclamation Obligations and the AEP approves the sales of the Active Pits.
73. It is Traveler's position that Mantle and its management should not have any additional time to complete this process through the CCAA Proceedings or to continue to expend significant amounts and further reduce the assets available for recovery by the secured creditors under the benefit of the priority charges.
74. Travelers estimates that professional fees of least approximately \$750,000 have been incurred in the Proposal Proceedings by Mantle's counsel. Additional amounts have also been incurred by FTI, and FTI's counsel.<sup>91</sup> Mantle estimates incurring further legal costs

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<sup>88</sup> In the CCAA proceedings of *Re Oilsands Quest Inc*, 2012 ABQB, Court File No. 1101-16110, [Order re Expansion of Monitor's Powers \(dated June 27, 2012\)](#) at TAB 12 of the Book of Authorities;  
In the CCAA proceedings of *Re Poseidon Concepts Corp*, 2013 ABQB, Court File No. 1301-04364, [Order re: Expansion of Monitor's Powers \(dated September 30, 2013\)](#) at TAB 13 of the Book of Authorities;  
In the CCAA proceedings of *Re Sanjel Group of Companies*, 2016 ABQB, Court File No. 1601-03143, [Transition Order \(dated September 28, 2016\)](#), at TAB 14 of the Book of Authorities.

<sup>89</sup> [The Order of Justice Eidsvik, dated May 14, 2021 in the JMB/216 CCAA Proceeding](#), at TAB 15 of the Book of Authorities.

<sup>90</sup> First Affidavit at paras 21, 34, and 53; Third Affidavit at para 12 and 13; Fourth Affidavit at para 12.

<sup>91</sup> Second Report at para 22; Third Report at para 50, Fourth Report at para 52, 59(d), Appendix C.

in the amount of at least approximately \$142,891 in respect of the CCAA Proceedings up to the period ending on March 1, 2024 and approximately \$283,000 in respect of FTI and FTI's counsels' fees up to March 1, 2024.<sup>92</sup>

75. There is no longer any need to have Mantle as a debtor in control of these proceedings. Mantle's sole shareholder, RLF Canada Holdings Limited, no longer has any reasonable prospect of recovery from the estate of Mantle and is not attempting to restructure Mantle's affairs. Additionally, the ultimate parent of Mantle, RLF Canada Holdings, and RLF Canada Lender Limited – RLF V is already represented in its capacity as the sole shareholder of the secured lender and interim lender, RLF Lender. RLF Lender is likely the only entity that will see any recovery from Mantle on behalf of RLF V. Requiring that RLF Lender act as and represent itself in the same capacity as any other secured creditor in these proceedings is appropriate and fair.
76. FTI's most recent report is clear that there is unlikely to be a distribution available for **most** of the secured creditors. Mantle is not operating, has given up its offices, laid off its employees (most permanently), and is only remaining as a functioning entity to deal with the Reclamation Obligations, complete a sale of the Active Pits, and distribute any available funds to its secured creditors.<sup>93</sup>
77. This is further highlighted by the fact that Mantle itself was created from an amalgamation with JMB/216 pursuant to the JMB/216 CCAA Proceedings only two years ago. Travelers submits that Mantle, and its management, should not be allowed to continue this liquidation process when those efforts have not been completed over the last five months and there is very few outstanding matters left. Permitting an underfunded and essentially defunct debtor to continue to manage its insolvent business is not a desirable goal for restructuring proceedings.
78. 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 Monitor with enhanced powers.

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<sup>92</sup> Fourth Report at para 56, 57 and 59(d).

<sup>93</sup> Fourth Report at para 44.

**(1) The Monitor Can Oversee the Outstanding Reclamation Work**

79. Mantle has presented no cogent evidence that it is necessary for its executive, its management team, or legal counsel to stay involved and in control of the CCAA Proceeding in order to complete the Reclamation Work or the sale of the Active Pits. To the contrary:
- a. As outlined at paragraphs 31 to 32 above, Mantle has and continues to rely on the expertise of third-party environmental consultants and contractors to provide the Reclamation Plans and to conduct the Remediation Work, and intends to rely on a third-party consultant to monitor the Reclamation Work during the assessment period;<sup>94</sup>
  - b. Mr. Levkulich, in his capacity as director of Mantle, has deposed that he has only a high level understanding of the current status of the Reclamation Work and that he relies on Mr. Pichota to monitor the Reclamation Work; and<sup>95</sup>
  - c. Mantle has advised that the only Reclamation Work left to be completed before the two-year assessment period is in respect of the MacDonald Pit, the Hoye/Kucy Pit, and the SML 060060 Pit (the particulars of which are described above in paragraph 35) which Mantle estimates will have a “modest cost” to complete that Minor Outstanding Reclamation Work. Travelers has asked for an estimate of what that “modest cost” will be but has not received as response to that undertaking as of the date of this Brief of Argument.
80. Accordingly, to the extent that Mantle’s management did have any particular expertise or knowledge relevant to the completion of the Reclamation Work, their continued involvement is, in Traveler’s view, no longer sufficiently necessary to offset the increased professional costs associated with their continued involvement and Mantle’s continued role as a debtor in the CCAA proceedings that is separately represented by legal counsel.
81. FTI, in its capacity as Monitor, with the enhanced powers set out in the proposed form of Enhanced Powers Order, is perfectly capable of engaging the Environmental Consultants in order to complete the Reclamation Work associated with the Inactive Pits, and would

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<sup>94</sup> Second Cross-Examination at 109:4 to 110:23.

<sup>95</sup> First Cross-Examination at 41:18 to 41:21.

do so in a more cost-effective and efficient manner than if Mantle is permitted to continue to manage its affairs through the CCAA Proceedings.

82. Further, Travelers questions the objectivity of the directors and executives to implement and oversee the liquidation of Mantle, for the benefit of its creditors and the public, when they themselves are faced with a significant risk of potential personal liability in respect of the 2021 EPOs pursuant to the following sections in the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12:

- a. pursuant to section 227, a person who contravenes an environmental protection order or, more specifically, fails to carry out reclamation work in accordance with an environmental protection order, is guilty of an offence;
- b. pursuant to section 228(2), a person who commits such an offence is liable to a fine of not more than \$50,000;
- c. pursuant to section 232, where a corporation is guilty of an offence, a director who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and liable, whether or not the corporation has been prosecuted for or convicted of the offence;
- d. pursuant to section 240, where an environmental protection order is directed to more than one person, all persons named in the order are jointly and severally liable for carrying out the terms of the order and are jointly and severally liable for payment of the costs of doing so;
- e. pursuant to section 245, where a person to whom an environmental protection order is directed fails to comply with the environmental protection order, the Regulator may carry out the terms of the Order and recover the costs in an action in debt against the person to whom the environmental protection order was directed.<sup>96</sup>

83. At the First Cross-Examination, Mr. Levkulich was questioned on his knowledge of his potential personal liability under the 2021 EPOs as director of Mantle and an individual directly named in the EPOs.<sup>97</sup>

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<sup>96</sup> [Environmental Protection and Enhancement Act, RSA 2000, c E-12](#) at sections 227, 228, 232, 240, 245.

<sup>97</sup> First Cross-Examination at 79:17; 81:3; 81:20; 82:14; 83:13; 84:5.

84. Notwithstanding that Mr. Levkulich had sworn evidence in the JMB/216 CCAA Proceedings about his own risk of exposure to personal liability under the EPOs and attempts made by JMB in the JMB/216 CCAA Proceedings to eliminate that liability,<sup>98</sup> and the AEP advising Mr. Levkulich on August 1, 2023, that the 2021 EPOs were issued against Mr. Levkulich and Mantle, among others, “jointly and severally”,<sup>99</sup> Mr. Levkulich advised responded that he didn’t know if he could be personally liable under the 2021 EPOs.<sup>100</sup>
85. By letter dated December 3, 2023, Mr. Levkulich, through his counsel, changed his response to those questions and then answered ‘Yes’ to the questions raised at the First Cross-Examination. At the Second Cross-Examination, he confirmed that he was aware he could be personal liable under the 2021 EPOs.<sup>101</sup>
86. Mantle’s lack of objectivity is highlighted by the fact that, notwithstanding Mantle’s evidence that they have not viewed Mantle as a viable business since at least June 2023, RLF V, through RLF Lender, has loaned a significant amount of money to Mantle, and is willing to advance more under the Interim Financing Facility, primarily to fund and complete the Reclamation Work.<sup>102</sup>
87. It is Travelers belief that the RLH Group’s willingness to advance these funds, in the face of such uncertainty, can, in large part, be explained by the personal exposure that its directors, principal and partners will face if Mantle is unable to meet its Reclamation Liabilities. This includes the potential reporting requirements that Mr. Levkulich and Mr. Patsch, who are directors of other entities within the RLH Group, could potentially face to investors in RLF V and regulators in the industries RLH invests in, if they are found personally liable for a damages award or a quasi-criminal conviction under the *EPEA*.
88. Further to paragraph 87 above, we note that a series of questions were put to Mr. Levkulich at the Second Cross-Examination regarding his requirements to report on these issues to RLF V’s investors and applicable regulators, however, those questions were improperly refused by Mantle’s counsel and are the subject of Travelers’ application to compel responses, which was filed on December 14, 2023.

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<sup>98</sup> Second Cross-Examination, Exhibit A for Identification at paras 30 to 38.

<sup>99</sup> Fifth Affidavit at Exhibit BB.

<sup>100</sup> First Cross-Examination at 69:17 to 20; 81:3 to 6; 81:20 to 24; 82:14 to 17; 83:13 to 15; 84:5 to 84:8.

<sup>101</sup> Second Cross-Examination at 59:14 to 60:8.

<sup>102</sup> Second Cross-Examination at 22:27 to 23:3.; First Cross Examination at 63:1 to 14.

89. It is Travelers further belief that the personal exposure Mr. Levkulich and Mr. Patsch face in respect of the EPOs significantly explains why Mantle was created to acquire the assets from JMB, has pursued a costly debtor-led restructuring process so persistently, notwithstanding Mantle's acknowledgment that there are minimal steps left to complete the Minor Outstanding Reclamation Work and there is minimal or no benefit to the estate of Mantle if it continues to manage these operations.

**(2) *The Monitor Can Manage and Complete the Sales Process in Respect of Mantle's Assets***

90. With respect to the marketing and sale of Mantle's assets, Mantle has similarly presented no cogent evidence that there is anything unique about its assets or its business, or their access to potential purchasers, that warrants the continued participation of the executive and management in the CCAA Proceedings.

91. FTI, in its capacity as Monitor, with the enhanced powers set out in the proposed form of Order, has the requisite knowledge of Mantle's business and assets, given its extensive involvement in the Proposal Proceedings and the JMB/216 CCAA Proceedings, and expertise to effectively and efficiently complete the sales process in respect of Mantle's assets and to make subsequent distributions to Mantle's secured creditors.

92. FTI's expertise is highlighted by the fact that in the JMB/216 CCAA Proceedings, the Monitor was responsible, with assistance from a sales agent, for implementing the proposed sales solicitation process without assistance from the executive or management of JMB/216, as there was a potential conflict of interest in the sales process because CARC wanted to participate as a bidder.<sup>103</sup>

93. In light of the foregoing, Travelers submits that it is appropriate in the circumstances to enhance the Monitor's powers to allow it to take control of Mantle's affairs and to complete the limited steps necessary to facilitate the winding down and liquidation of Mantle's business and assets.

94. Enhancing the Monitor's powers in this way would permit an orderly and cost effective liquidation of Mantle's remaining assets, permitting Travelers, and Mantle's other secured

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<sup>103</sup> [The Amended and Restated CCAA Initial Order of Justice Eidsvik, dated May 11, 2020](#), in the JMB/216 Proceeding at TAB 16 of the Book of Authorities.



creditors, the best opportunity to realize some recovery on their respective collateral, with the least amount of professional costs incurred in priority to other creditors.

**(3) *The Administration Process under the CCAA Proposed by Mantle is Akin to a Receivership***

95. Mantle has proposed in its evidence that some form of an “administration process” will be undertaken during the CCAA. Mr. Levkulich could not describe what that administration process was other than obtaining a Court order to advance certain steps. Each of the steps outlined under the proposed administration process can be completed by the Monitor and Mantle is not necessary or required to complete any of those steps<sup>104</sup>.
96. To the contrary, the steps proposed by Mantle are reminiscent of the steps a receiver would take to liquidate assets of an insolvent debtor, account for funds received and complete any necessary remediation work. There is no authority or practical basis to allow Mantle to undertake those administration steps as a debtor in a CCAA proceeding at significant cost to all secured creditors of Mantle.
97. It should also be noted that Court officers commonly engage in reclamation work and deal with environmental reclamation and remediation obligations in Alberta on insolvency matters. There are a number of proceedings where regulators and other entities have appointed court officers to monetize the assets of a debtor and perform this work on their behalf<sup>105</sup>.
98. Additionally, Mantle in its earlier evidence on what it was proposing to accomplish within the CCAA proceedings suggested it would undertake extraordinary, costly and unnecessary steps such as seeking a reverse vesting order, filing a plan of arrangement, and creating a debenture for some form of distribution to unsecured creditors, despite there being no possible chance any unsecured creditors have any financial interest in the assets of Mantle in priority to the secured creditors.<sup>106</sup> Mr. Levkulich confirmed in questioning on December 4, 2023 that Mantle may still seek a reverse vesting order in the

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<sup>104</sup> Fifth Affidavit at paras 108 and 109

<sup>105</sup> In the Receivership of Bow River Energy Ltd, [the Receivership Order, dated October 29, 2020](#) at TAB 17 of the Book of Authorities; in the Receivership of Everest Canadian Resources Corp., [the Receivership Order, dated April 6, 2023](#) at TAB 18 of the Book of Authorities; in the Receivership of Sanling Energy Ltd., [the Receivership Order, dated April 23, 2021](#). at TAB 19 of the Book of Authorities.

<sup>106</sup> Fourth Affidavit at paras 41 and 42.

CCAA Proceedings, a step that has no discernible benefit to any of the remaining parties who have an economic interest in the assets and property of Mantle<sup>107</sup>.

**V. RELIEF SOUGHT**

99. For the reasons described above, Travelers requests an Order from this Honourable Court
- 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 CCAA for the purposes of allowing this application to proceed;
  - c. enhancing and expanding the powers of the Proposed Monitor;
  - d. granting a sealing order over any confidential information that may be deemed necessary to preserve the confidentiality of and which may be referred to in this Brief of Argument; and
  - e. such further and other relief as may be sought by Travelers and the Court may deem just and appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 14<sup>th</sup> DAY OF DECEMBER, 2023.

**MLT AIKINS LLP**

Per:



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Ryan Zahara/Molly McIntosh  
Counsel for Travelers Capital Corp.

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<sup>107</sup> Second Cross-Examination at 112: 20 to 113:20

## LIST OF AUTHORITIES

### Legislation

1. [Companies' Creditors Arrangement Act, RSC 1985, c C-36](#)
2. [Bankruptcy and Insolvency Act, RSC 1985, c B-3](#)
3. [Environmental Protection and Enhancement Act, RSA 2000, c E-12](#)

### Case Law

4. [Re Mantle Materials Group Ltd, 2023 ABKB 488](#)
5. [Mantle Materials Group Ltd v Travelers Capital Corp, 2023 ABCA 302.](#)
6. [9354-9186 Callidus Corp, 2020 SCC 10](#)
7. [Century Services Inc v Canada \(Attorney General\), 2010 SCC 60](#)
8. [Arrangement relative a 9323-7055 Quebec Inc \(Aquadis International Inc.\), 2020 QCCA 659](#)
9. [Ernst & Young Inc v Essar Global Fund Limited, 2017 ONCA 1014'](#)
10. [Walter Energy Canada Holdings Inc., Re, 2016 BCSC 1746](#)

### Court Orders

11. In the CCAA proceedings of *Groupe Selection Inc., et al*, 2022 QCCS, Court File No. 500-11-061657-223:
  - a. [ement Sur Demandes Pour L'Emission d'une Ordonnance Initiale et d'une Ordonnance Initiale Amende et Reformulee \(dated November 21, 2022\)](#) (in French);
  - b. [Judgment on Applications for an Initial Order and an Amended and Restated Initial Order \(dated November 21, 2022\)](#) (Unofficial Translation)
12. In the CCAA proceedings of *Re Oilsands Quest Inc*, 2012 ABQB, Court File No. 1101-16110, [Order re Expansion of Monitor's Powers \(dated June 27, 2012\)](#);
13. In the CCAA proceedings of *Re Poseidon Concepts Corp*, 2013 ABQB, Court File No. 1301-04364, [Order re: Expansion of Monitor's Powers \(dated September 30, 2013\)](#);
14. In the CCAA proceedings of *Re Sanjel Group of Companies*, 2016 ABQB, Court File No. 1601-03143, [Transition Order \(dated September 28, 2016\)](#).
15. [The Order of Justice Eidsvik, dated May 14, 2021 in the JMB/216 CCAA Proceeding.](#)
16. [The Amended and Restated CCAA Initial Order of Justice Eidsvik, dated May 11, 2020.](#)
17. In the Receivership of Bow River Energy Ltd, [the Receivership Order, dated October 29, 2020](#);
18. in the Receivership of Everest Canadian Resources Corp., [the Receivership Order, dated April 6, 2023](#);
19. in the Receivership of Sanling Energy Ltd., [the Receivership Order, dated April 23, 2021.](#)