

COURT FILE NO. 25-2965622  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, C B-3, AS AMENDED  
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF MANTLE MATERIALS GROUP, LTD.

APPLICANTS MANTLE MATERIALS GROUP, LTD.

DOCUMENT **SECOND SUPPLEMENTAL AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
**Gowling WLG (Canada) LLP**  
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File No. A171561  
**Attention: Tom Cumming / Stephen Kroeger**

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**AFFIDAVIT OF BYRON LEVKULICH**  
**SWORN ON AUGUST 14, 2023**

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

1. I am a director of the applicant, Mantle Materials Group, Ltd. ("**Mantle**") and 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. I am also a Principal with Resource Land Holdings, LLC ("**RLH LLC**"), which manages private equity funds which invest in land resources and is based in Denver, Colorado. Mantle is an indirect, wholly owned subsidiary of one of these funds.
2. I am authorized to swear this Affidavit as a corporate representative of Mantle.
3. In preparing this Affidavit, I have consulted with Mantle's management team together with the legal, financial and other advisors of Mantle. I have also reviewed the business records of Mantle

relevant to these proceedings and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.

4. All references to dollar amounts contained herein are to Canadian Dollars unless otherwise stated.
5. This Affidavit is supplemental to my Affidavit sworn August 7, 2023 (the "**August 7 Affidavit**"), the Affidavit of Cory Pichota sworn August 8, 2023 (the "**August 8 Affidavit**") and my Affidavit sworn August 11, 2023 (the "**August 11 Affidavit**"), and is filed in support of Mantle's application for an order extending the time within which to file a proposal under section 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**"), approving an interim financing (the "**Interim Financing**") under section 50.4 and granting an interim financing charge (the "**Interim Financing Charge**") under section 50.6 of the *BIA*, granting an administration charge under section 64.2 of the *BIA*, granting a directors' and officers' indemnification charge under section 64.1 of the *BIA*, and providing other relief. This Affidavit addresses certain matters raised in the Supplemental Bench Brief Travelers Capital Corporation ("**Travelers**", and such brief, the "**Travelers Brief**") filed on August 11, 2023.

**Material Change with respect to the Likelihood of making a Proposal**

6. Since filing the August 7 Affidavit, August 8 Affidavit and August 11 Affidavit, Mantle's counsel has had further discussions with counsel for the Department of Environment and Protected Areas (the "**EPA**") and have had an opportunity to review the affidavit of Heather Dent, a compliance manager with the EPA, filed on August 11, 2023 (the "**Dent Affidavit**"). In the Dent Affidavit, Heather Dent expressed the following views in paragraphs 6 to 9 thereof, which I am in agreement with based upon my knowledge of the Aggregate Pits (as defined in paragraph 10 of the August 7 Affidavit), the aggregate and gravel industry and of the reclamation work referred to in paragraph 13 of the August 11 Affidavit (the "**Reclamation Work**"):
  - (a) the EPA is of the view that the Reclamation Work to be conducted in respect of the Aggregate Pits is best conducted by Mantle, as it is the operator on-site, has familiarity with the compliance process, and the work which needs to be done, and is best suited to perform the work on an economical basis;
  - (b) the EPA must be satisfied with respect to the Reclamation Work that is carried out;
  - (c) any other party carrying out the Reclamation Work would have to expend more resources and funds to accomplish it; and

- (d) time is of the essence in commencing the Reclamation Work given the short time period before the winter freeze.

Based on these factors, in paragraph 10 of the Dent Affidavit, Heather Dent indicated that the EPA was supportive of Mantle's application.

- 7. It is to be noted that no Reclamation Work has been carried out by the EPA or its representatives in connection with the Aggregate Pits.
- 8. In the discussions between Mantle's counsel and EPA and its counsel, Mantle's counsel indicated that since the time-line for carrying out the Reclamation Work on the inactive Aggregate Pits pursuant to the Environmental Protection Orders (collectively, the "EPOs") referred to in paragraph 13 of the August 11 Affidavit extended beyond the maximum 6 month time period for filing a proposal under the *BIA*, a mechanism was required to allow Mantle or a special purpose entity to continue the Reclamation Work for the benefit of the public and all other stakeholders in Mantle. Given the early stage of these proceedings, and its uncertainty as to whether the EPA would support Mantle, Mantle had not yet determined whether this would be accomplished through a proposal or an asset sale under section 65.13 of the *BIA*, or some combination of the two.
- 9. The support of the EPA materially changes my view as to whether there is a realistic ability for Mantle to formulate a viable proposal under the *BIA*. Currently, the principal challenges are:
  - (a) the Reclamation Work with respect to the inactive Aggregate Pits must be completed, and the Environmental Reclamation Liabilities (as defined in paragraph 13 of the August 8 Affidavit) must be performed or provided for, in a manner satisfactory to the EPA, before there can be any distributions to creditors;
  - (b) the time line for the final completion of the Reclamation Work in respect of the inactive Aggregate Pits is November of 2025, although the majority of that work will be carried out in the next few months provided that the Orders being sought in this application are granted; and
  - (c) as is set out below, while there appears to be sufficient value in the estate of Mantle, assuming it can carry out its planned course of action curing these proceedings, to carry out the Reclamation Work in respect of the inactive Aggregate Pits, provide for the Environmental Reclamation Liabilities in respect of the inactive Aggregate Pits, and make distributions to Mantle's secured creditors, there may not be sufficient value to make distributions to Mantle's unsecured creditors.
- 10. As indicated in paragraphs 38 and 39 of the August 7 Affidavit, (a) the book value of Mantle's assets as at June 30, 2023 was \$7,452,838, of which \$5,850,495 relates to cash security, term

deposits, accounts receivable, inventory, equipment, and Mantle's interest in the Aggregate Pits, and (b) the book value of the liabilities was \$16,046,272, of which the Environmental Reclamation Liabilities is estimated to be \$3,666,893 and the liabilities to secured creditors is \$11,491,187.

11. Hence, while the book value of the assets suggests that there may not be sufficient value to permit a distribution to the unsecured creditors, if the Environmental Reclamation Liabilities are addressed, there is potentially significant value available for distribution to the secured creditors.
12. Therefore, Mantle intends to make a proposal to its secured creditors providing as follows:
  - (a) the payment of Mantle's indebtedness to the secured creditors would become payable only when proceeds of realization of the assets subject to their security become available for distribution, to the extent of such proceeds of realization;
  - (b) Mantle would perform the Reclamation Work required for the inactive Aggregate Pits in accordance with the EPOs, which would be financed under the Interim Financing Facility;
  - (c) Mantle would conduct a sale and marketing process, under the supervision of the Proposal Trustee, in order to sell its inventory, equipment and active Aggregate Pits, the latter on the basis that the purchaser or purchasers assume the Environmental Reclamation Liabilities relating to those Aggregate Pits;
  - (d) the proposal would be conditional upon:
    - (i) the acceptance of the proposal by the requisite majority of the secured creditors;
    - (ii) this Honourable Court making the following orders:
      - (A) an order approving the proposal; and
      - (B) a reverse vesting order (the "**RVO**"), vesting the liabilities of Mantle to unsecured creditors in a corporation to be incorporated ("**ResidualCo**"), which would be effective immediately prior to the implementation of the proposal;
  - (e) Mantle would issue to ResidualCo an unsecured debenture in the amount of the unsecured debt which would be payable to the extent that there are any proceeds available after distributions are made to secured creditors.
13. The benefit of this proposal to the secured creditors is that it would permit Mantle to (a) perform the Reclamation Work in respect of the inactive Aggregate Pits and provide for the Environmental Reclamation Liabilities in respect of the active Aggregate Pits, which would result in the security provided to EPA becoming available for distribution to secured creditors, (b) realize the assets of Mantle in a commercially reasonable manner under the supervision of FTI Consulting Canada

Inc., the proposal trustee (the “**Proposal Trustee**”) and in consultation with the secured creditors, and (c) upon the Reclamation Work and Environmental Reclamation Liabilities being respectively completed and provided for, making distributions to the secured creditors.

14. The RVO is necessary for the following reasons:
  - (a) I understand from counsel to Mantle that the registrations, licenses and surface material leases of Mantle cannot be assigned without the consent of the EPA, and even with the support of the EPA would require a protracted process;
  - (b) while the realizable value of Mantle’s assets will only be known for certainty once a sale process is carried out, based on the book value of its assets there does not appear to be sufficient value to make distributions under a proposal to unsecured creditors, and therefore it is unrealistic to expect that they would agree to a proposal; and
  - (c) in the event that the actual values of Mantle’s assets exceed the amount outstanding to secured creditors, the debenture in favour of ResidualCo would become payable and permit a distribution to unsecured creditors.
15. Since Mantle does not have sufficient funds available to carry out the Reclamation Work or to sell the active Aggregate Pits, the only realistic prospect for addressing the Environmental Reclamation Liabilities and making assets available for distribution to creditors, including performing the Reclamation Work this year, is Mantle to obtain the Interim Financing, the extension of the period within which to file a proposal under section 50.4(9) of the *BIA* and the other relief provided for, and ultimately to implement a proposal in the form described above.

#### **Travellers’ Comments on Asset Values**

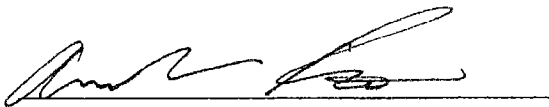
16. In paragraphs 14 and 15 of the Travelers Brief, Travelers conflates the book value of assets with their market value in a bankruptcy scenario.
17. The book value of assets is determined on a different basis than fair market value. The calculation of book value is explained in the draft audited financial statements as of December 31, 2022 attached as Exhibit “G” to the August 7 Affidavit:
  - (a) paragraph 3(d) of the notes to the financial statements (the “**Notes**”) states that the book value of property and equipment is recorded at historical cost less accumulated amortization (based on their estimated useful lives) and accumulated impairment losses;
  - (b) paragraph 3(f) of the Notes states that if there is any indication of impairment of an asset, then the assets recoverable amount is estimated, which is the greater of its value-in-use and its fair value less costs to sell, and in assessing value-in-use, the estimated future cash

flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the assets;

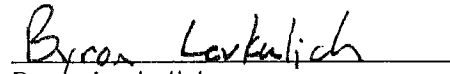
- (c) paragraph 3(m)(iv) of the Notes states that the book value of mineral property is based on the estimated future net cash flow from the company's mineral properties, which is based on reserve estimates, which are based on assumptions relating to production rates, grade or quality of mineral reserves, processing recovery rates and other factors; and
  - (d) paragraph 3(m)(vi) of the Notes states that the book value of inventory is the lower of its average cost and its net realizable value, and net realizable value is management's estimate of the market prices and timing of sales, which could vary significantly from actual value received.
18. On the other hand, the generally accepted definition of fair market value is the highest price available in an open and unrestricted market between informed and prudent parties, acting at arm's length and under no compulsion to act, expressed in terms of cash. In a liquidation scenario, two definitions of fair market value can be applicable:
- (a) in an orderly liquidation scenario, fair market value or orderly liquidation value is defined as the estimated gross amount, expressed in terms of cash, that an asset will typically realize at a privately negotiated sale, properly managed by an experienced, seller of the kind and type being sold on an "as is where is" basis with the purchaser being responsible for removal of the assets at purchaser's own risk and expense; and
  - (b) in a forced liquidation scenario, fair market value or forced liquidation value is the estimated gross amount, expressed in terms of cash, that an asset will typically realize at a properly conducted public auction when the seller is compelled as of a specific date within a 60 to 90 day period which amount does not account for the costs of transporting the asset to the auction site. The asset is sold piece meal on an "as is where is" basis with the purchaser being responsible for removal of the assets at purchaser's own risk and expense.
19. Dustin Olver, a Senior Managing Director with the Proposal Trustee, told me that based on his experience, an orderly liquidation will typically yield higher sale prices than a forced liquidation, the latter of which is the likely result of a bankruptcy, and that the sale prices achieved in either scenario are often less than their book value. Hence, if Mantle becomes bankrupt, it is unclear whether the sale of its assets would yield sufficient amounts to address the Environmental Reclamation Liabilities, which given the legal obligation to address those liabilities before distributions are made to creditors, would be very prejudicial to creditors and indeed the public.

20. I swear this Affidavit in support of an Application for the relief set out in paragraph 6 of the August 8 Affidavit filed in these proceedings.

Sworn before me at the City of Denver, in  
the ~~Province of Alberta~~ <sup>State of Colorado</sup>, on this 14<sup>th</sup> day of  
August, 2023



A Notary Public in  
and for the State of Colorado

}   
Byron Levkulich

