No. S-1510120
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF NEW WALTER ENERGY CANADA HOLDINGS, INC., NEW WALTER CANADIAN COAL CORP., NEW BRULE COAL CORP., NEW WILLOW CREEK COAL CORP., NEW WOLVERINE COAL CORP. AND CAMBRIAN ENERGYBUILD HOLDINGS ULC

PETITIONERS

BOOK OF AUTHORITIES OF THE PETITIONERS, NEW WALTER CANADA GROUP

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Date of application: Tuesday, February 25, 2020
Time of application: 9:00 a.m.
Place of application: 800 Smithe St, Vancouver, BC V6Z 2E1
Time estimate: 45 minutes
Prepared by: Osler, Hoskin & Harcourt LLP

No. S-1510120
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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PETITIONERS

INDEX

Tab 1

Court File No. CV14-10781-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE REGIONAL	)	**THURSDAY, THE 30TH**
	)	
SENIOR JUSTICE MORAWETZ	)	**DAY OF JULY, 2015**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF CLINE MINING CORPORATION, NEW ELK COAL COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY

Applicants

CCAA TERMINATION ORDER

THIS MOTION made by Cline Mining Corporation, New Elk Coal Company LLC and North Central Energy Company (collectively, the "**Applicants**") for an Order, *inter alia*, (a) terminating these proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"); and (b) discharging FTI Consulting Canada Inc. ("**FTI**") as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Matthew Goldfarb sworn July 24, 2015 (the "**Goldfarb Affidavit**"), filed, the Sixth Report of the Monitor dated July 24, 2015 (the "**Sixth Report**"), filed, the affidavit of Paul Bishop sworn July 24, 2015 (the "**Bishop Affidavit**"), filed, the affidavit of Michael De Lellis sworn July 24, 2015 (the "**De Lellis Affidavit**"), filed, and on hearing the submissions of counsel for each of the Applicants, the Monitor and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Bradley Wiffen sworn July 28, 2015, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Sixth Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

TERMINATION OF CCAA PROCEEDINGS

2. **THIS COURT ORDERS** that the CCAA Proceedings are hereby terminated.

3. **THIS COURT ORDERS** that the Directors' Charge (as defined in the Initial Order of this Court granted December 3, 2014 (the "**Initial Order**")) and, subject to the payment in full of all amounts owing to the beneficiaries of the Administration Charge (as defined in the Initial Order), the Administration Charge shall be and are hereby terminated, released and discharged.

APPROVAL OF ACTIVITIES

4. **THIS COURT ORDERS** that the activities and conduct of the Monitor prior to or on the date hereof in relation to the Applicants and these CCAA proceedings are hereby ratified and approved.

5. **THIS COURT ORDERS** that the Fifth Report of the Monitor dated May 27, 2015, the Sixth Report and the activities and conduct of the Monitor described in each of such reports, are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

6. **THIS COURT ORDERS** that the fees and disbursements of the Monitor in the amount of $33,807.89 (for the period from March 16, 2015 to July 19, 2015 inclusive, and including Harmonized Sales Tax) and the Monitor's fees and disbursements, estimated not to exceed $10,000, to complete its remaining duties and the administration of these CCAA Proceedings through to the date hereof, all as set out in the Bishop Affidavit and the Sixth Report, are hereby approved.

7. **THIS COURT ORDERS** that the fees and disbursements of Osler, Hoskin & Harcourt LLP, in its capacity as counsel to the Monitor ("**Osler**"), in the amount of $64,026.18 (for the period from February 29, 2015 to July 24, 2015 inclusive, and including Harmonized Sales Tax) and Osler's fees and disbursements, estimated not to exceed $7,500, in connection with the completion by the Monitor of its remaining duties and the administration of these CCAA Proceedings through to the date hereof, all as set out in the De Lellis Affidavit and the Sixth Report, are hereby approved.

DISCHARGE OF THE MONITOR

8. **THIS COURT ORDERS AND DECLARES** that the Monitor has duly and properly satisfied, discharged and performed all of its obligations, liabilities, responsibilities and duties in compliance and in accordance with the CCAA Proceedings, the terms of the Applicants' plan of compromise and arrangement, as may be further amended, restated, modified or supplemented from time to time, all Orders of this Court made in the CCAA Proceedings, the CCAA or otherwise, save and except as set out in paragraph 13 hereof.

9. **THIS COURT ORDERS AND DECLARES** that FTI is hereby discharged as Monitor effective immediately and shall have no further duties, obligations or responsibilities as Monitor, save and except as set out in paragraph 13 hereof.

10. **THIS COURT ORDERS** that the Monitor, Osler and each of their respective affiliates and officers, directors, partners, employees and agents (collectively, the "**Released Parties**") are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of or in respect of the CCAA Proceedings or with respect to their respective conduct in the CCAA Proceedings (collectively, the "**Released Claims**"), and any such Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or willful misconduct on the part of the Released Parties.

11. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against any of the Released Parties in any way arising from or related to the CCAA Proceedings, except with prior leave of this Court on at least seven days' prior written notice to the applicable Released Parties and upon further Order securing, as security for costs, the full indemnity costs of the applicable Released Party in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

12. **THIS COURT ORDERS** that, notwithstanding any provision of this Order and the termination of the CCAA Proceedings, nothing herein shall affect, vary, derogate from, limit or amend any of the rights, approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, any other Order of this Court in the CCAA Proceedings or otherwise, all of which are expressly continued and confirmed.

GENERAL

13. **THIS COURT ORDERS** that, notwithstanding the discharge of FTI as Monitor and the termination of the CCAA Proceedings, the Court shall remain seized of any matter arising from these CCAA Proceedings including in respect of the Unresolved Claim (as defined in the Goldfarb Affidavit), the IRS Claim (as defined in the Goldfarb Affidavit), and any other matters arising from or that are incidental to these CCAA Proceedings, and each of the Applicants, FTI and any interested party that has served a Notice of Appearance in these CCAA Proceedings, shall have the authority from and after the date of this Order to apply to this Court to address matters incidental to these CCAA Proceedings notwithstanding the termination thereof. Following the termination of these CCAA Proceedings, FTI is authorized to take such steps and actions as it deems necessary to complete or address matters ancillary or incidental to its capacity as Monitor, including in respect of the Unresolved Claim and the IRS Claim, and FTI is authorized to continue to act as foreign representative of these CCAA Proceedings in the United States until the completion of the Chapter 15 Proceedings (as defined in the Goldfarb Affidavit). With respect to FTI completing or addressing any such ancillary or incidental matters or acting as foreign representative: (i) the Applicants shall pay FTI and its counsel their respective reasonable fees and disbursements incurred in connection therewith at their standard rates and charges; and (ii) FTI shall continue to have the benefit of the provisions of the CCAA, all Orders made in the CCAA Proceedings, or otherwise, including the Administration Charge and all

rights, approvals, protections and stays of proceedings in favour of FTI in its capacity as Monitor.

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicants, FTI and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, FTI and their respective agents as may be necessary or desirable to give effect to this Order, or to assist the Applicants, FTI and their respective agents in carrying out the terms of this Order.

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JUL 30 2015

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF CLINE MINING CORPORATION, NEW ELK COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY

Applicants

Court File No.: CV14-10781-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

CCAA TERMINATION ORDER

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Tab 2

Court File No. CV-16-11527-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	**THURSDAY, THE 29TH**
	)	
JUSTICE CONWAY	)	**DAY OF MARCH, 2018**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GOLF TOWN CANADA HOLDINGS INC., GOLF TOWN CANADA INC. AND GOLF TOWN GP II INC.

Applicants

CCAA TERMINATION ORDER

THIS MOTION made by Golf Town Canada Holdings Inc., Golf Town Canada Inc. ("**GT Canada**"), Golf Town GP II Inc., Golfsmith International Holdings LP and Golf Town Operating Limited Partnership (collectively, the "**Golf Town Entities**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Brian Cejka (the "**CRO**") sworn March 22, 2018, the Eighth Report of FTI Consulting Canada Inc. ("**FTI**") as the Court-appointed Monitor of the Golf Town Entities (the "**Monitor**") dated March 22, 2018 (the "**Eighth Report**") and the affidavits sworn in support of the approval of the fees and disbursements of the Monitor and its counsel, and on hearing the submissions of counsel for each of the Golf Town Entities, the Monitor and such other counsel as were present and wished to be heard, and on reading the affidavit of service, filed:

DEFINED TERMS

1. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Initial Order of this Court dated September 14, 2016 (as amended, the "**Initial Order**").

DISTRIBUTION OF FUNDS

2. **THIS COURT ORDERS** that the Monitor is authorized and directed to hold a reserve of funds from proceeds of the Golf Town Entities (the "**Reserve**") from time to time in an amount determined by the Monitor, in consultation with counsel to the Golf Town Entities, which Reserve shall be sufficient for the payment of:

(a) any claim secured by the Charges granted by this Court pursuant to the Initial Order;

(b) any expense or obligation incurred by the Golf Town Entities that relates to the period from and after the date of the Initial Order or is otherwise payable pursuant to the Initial Order; and

(c) any other amounts appropriate in the circumstances to ensure the availability of sufficient funds to undertake and complete the orderly wind-down of the Golf Town Entities and these proceedings and all ancillary activities in connection therewith, including any assignments in bankruptcy in respect of the Golf Town Entities pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**").

3. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in any other Order of this Court, the Monitor is hereby authorized and directed, subject to the prior written consent of the CRO, to distribute to BNY Trust Company of Canada, in its capacity as Canadian co-trustee (the "**Trustee**") under the Secured Notes Indenture (as defined below), in one or more distributions (each a "**Distribution**" and, collectively, the "**Distributions**"), all funds or proceeds in respect of the Golf Town Entities held by the Monitor in excess of the amount of the Reserve determined at the time of such Distribution, provided that, for greater certainty, the aggregate amount of all Distributions made to the Trustee on behalf of the Golf Town Entities shall not

exceed the aggregate obligations owing by the Golf Town Entities pursuant to the indenture dated as of July 24, 2012, as amended (the "**Secured Notes Indenture**"), pursuant to which GT Canada and Golfsmith International Holdings, Inc. (collectively with their affiliates, the "**Company**") issued the 10.50% senior second lien notes due 2018 (the "**Secured Notes**"). For greater certainty, this paragraph shall apply to all funds or proceeds in respect of the Golf Town Entities that are held by or come into the possession of the Monitor following the CCAA Termination Date (as defined below) (the "**Post-Termination Proceeds**").

4. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

(b) the assignment in bankruptcy or any petition for a bankruptcy order now or hereafter issued pursuant to the BIA and any order issued pursuant to such petition; or

(c) any provisions of any federal or provincial legislation,

the Distributions shall be binding on any trustee in bankruptcy or receiver that may be appointed and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF MONITOR'S ACTIVITIES

5. **THIS COURT ORDERS** that the activities and conduct of the Monitor prior to or on the date hereof in relation to the Golf Town Entities and these proceedings are hereby ratified and approved.

6. **THIS COURT ORDERS** that the reports of the Monitor filed to date in these proceedings (including the Eighth Report), and the activities and conduct of the Monitor described in each of such reports, are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS OF THE MONITOR

7. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from September 14, 2016 to February 28, 2018, and its fees and disbursements, estimated not to exceed $60,000, for the completion of remaining activities in connection with these proceedings, all as set out in the affidavit of Paul Bishop sworn March 21, 2018, are hereby approved.

8. **THIS COURT ORDERS** that the fees and disbursements of Osler, Hoskin & Harcourt LLP, in its capacity as counsel to the Monitor, for the period from September 1, 2016 to February 28, 2018, and its fees and disbursements, estimated not to exceed $50,000, for the completion of remaining activities in connection with these proceedings, all as set out in the affidavit of Tracy Sandler sworn March 22, 2018, are hereby approved.

TERMINATION OF CCAA PROCEEDINGS

9. **THIS COURT ORDERS** that upon the filing of a certificate of the Monitor in substantially the form attached hereto as Schedule "A" (the "**Monitor's Certificate**") confirming that all matters to be attended to in connection with the Golf Town Entities and proceedings in respect of the Company have been completed, the proceedings shall be terminated without any further act or formality (the "**CCAA Termination Date**"). For greater certainty, the Monitor's Certificate may be filed and the CCAA Termination Date may occur notwithstanding one or more Distributions are expected to occur following the CCAA Termination Date.

10. **THIS COURT ORDERS** that the Charges shall be and are hereby terminated, released and discharged as of the CCAA Termination Date. Notwithstanding the foregoing, where the Monitor continues to hold a Reserve at the CCAA Termination Date with respect to a Charge, such Charge, in an amount equal to the corresponding Reserve amount held by the Monitor, shall not be terminated, released or discharged until such time as the corresponding Reserve amount is distributed or released pursuant to the terms of this Order.

11. **THIS COURT ORDERS** that each of the Golf Town Entities shall be authorized, in its discretion or at the discretion of the Monitor, to make an assignment in bankruptcy pursuant to the BIA on or after the CCAA Termination Date, and the Monitor is hereby authorized to file any such assignment in bankruptcy for and on behalf of any Golf Town Entity and to take any

steps reasonably incidental thereto. FTI is hereby authorized to act as trustee in bankruptcy in respect of any Golf Town Entity that makes an assignment in bankruptcy pursuant to the BIA.

DISCHARGE OF THE MONITOR

12. **THIS COURT ORDERS AND DECLARES** that effective on the CCAA Termination Date, the Monitor shall be and is hereby discharged as Monitor and shall have no further duties, obligations or responsibilities as Monitor from and after the CCAA Termination Date, provided that, notwithstanding its discharge herein, the Monitor shall remain Monitor for the performance of such incidental or ancillary duties as may be required to complete the administration of the Golf Town Entities' estate or these proceedings following the CCAA Termination Date, including the duty to effect a Distribution of any Post-Termination Proceeds pursuant to the terms of this Order and the discretion to authorize an assignment in bankruptcy pursuant to paragraph 11 hereof.

13. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the termination of these proceedings or the discharge of the Monitor, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor shall continue to have the benefit of, any of the rights, approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, any other Order of this Court in these proceedings or otherwise, all of which are expressly continued and confirmed following the CCAA Termination Date, including in connection with any actions taken by FTI following the CCAA Termination Date with respect to the Golf Town Entities or these proceedings.

RELEASE

14. **THIS COURT ORDERS** that (i) the present and former direct and indirect shareholders, directors, officers, employees, legal counsel and advisors of the Golf Town Entities (or any of them) or Golfsmith International Holdings GP Inc., and (ii) the Monitor and its legal counsel (the persons listed in clauses (i) and (ii) being collectively, the "**Released Parties**") are hereby forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, recoveries, and obligations of

whatever nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the CCAA Termination Date or completed pursuant to the terms of this Order in respect of the Company, the business, operations, assets, property and affairs of the Company wherever or however conducted or governed, the administration and/or management of the Company, the Secured Notes Indenture, the Secured Notes and these proceedings (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing in this paragraph 14 shall waive, discharge, release, cancel or bar any claim against the Directors and Officers that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

EXTENSION OF THE STAY OF PROCEEDINGS

15. **THIS COURT ORDERS** that the Stay Period (as defined in and used throughout the Initial Order) be and is hereby extended to and including the earlier of (i) the CCAA Termination Date, and (ii) May 31, 2018.

GENERAL

16. **THIS COURT ORDERS** that the Golf Town Entities or the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

17. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to give effect to this Order and to assist the Golf Town Entities and the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Golf Town Entities and the Monitor and their respective agents

as may be necessary or desirable to give effect to this Order, or to assist the Golf Town Entities and the Monitor and their respective agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 29 2018

PER / PAR:

Schedule A – Form of Monitor's Certificate

Court File No. CV-16-11527-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GOLF TOWN CANADA HOLDINGS INC., GOLF TOWN CANADA INC. AND GOLF TOWN GP II INC.

Applicants

MONITOR'S CERTIFICATE

RECITALS

A. FTI Consulting Canada Inc. was appointed as the Monitor of the Golf Town Entities in the within proceedings pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 14, 2016.

C. Pursuant to the Order of this Court dated March 29, 2018 (the "**CCAA Termination Order**"), the Monitor shall be discharged and these proceedings shall be terminated upon the filing of this Monitor's Certificate with the Court.

D. Unless otherwise indicated herein, capitalized terms used in this Monitor's Certificate shall have the meanings given to them in the CCAA Termination Order.

THE MONITOR CONFIRMS the following:

1. All matters to be attended to in connection with the Golf Town Entities and proceedings in respect of the Company have been completed.

ACCORDINGLY, the CCAA Termination Date as defined in the CCAA Termination Order has occurred on the date set forth below.

DATED at Toronto, Ontario this _____ day of _____, 2018.

FTI Consulting Canada Inc., in its capacity as Monitor of the Golf Town Entities, and not in its personal capacity

Per: _____

Name:

Title:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GOLF TOWN CANADA HOLDINGS INC., GOLF TOWN CANADA INC. AND GOLF TOWN GP II INC.

Applicants

Court File No. CV-16-11527-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

CCAA TERMINATION ORDER

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Lawyers for the Applicants

Tab 3

No. S-137743
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS* ACT, S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF LEAGUE ASSETS CORP. AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

ORDER MADE AFTER APPLICATION
(STAY EXTENSION, DISCHARGE AND TERMINATION ORDER)

BEFORE	THE HONOURABLE MADAM JUSTICE FITZPATRICK	December 6, 2019

ON THE APPLICATION of PricewaterhouseCoopers Inc., ("**PwC**") in its capacity as court appointed monitor of the Petitioners and not in its personal capacity (the "**Monitor**"), coming on for hearing at Vancouver, British Columbia on December 6, 2019 and on hearing Tracy C. Sandler and Jeremy E. Dacks, counsel for the Monitor, and the counsel on the list attached hereto as **Schedule "B"**, and upon reading the material filed, and pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. c. C-36, as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court:

THIS COURT ORDERS AND DECLARES that:

1. The time for service of the Notice of Application herein be and is hereby abridged and the Notice of Application is properly returnable today and service hereof upon any interested

party other than those parties on the service list maintained by the Petitioners and the Monitor in this matter is hereby dispensed with.

TERMINATION OF CCAA PROCEEDINGS

2. Upon the Monitor filing the Case Completion Certificate, certifying that it has filed a Remaining Yellow Box Entity Discharge Certificate (as defined in the Order pronounced December 11, 2015, being the "**Wind-Up Implementation Order**") with respect to each of the Petitioners, in substantially the same form as attached hereto as **Schedule "C"**, the within CCAA proceedings shall be automatically terminated effective on 12:01 am Pacific Time on the date of the Case Completion Certificate without any further act or formality (the "**CCAA Termination Time**").

DISCHARGE OF THE MONITOR

3. Notwithstanding any provision of this Order, effective on and from the CCAA Termination Time, PwC shall be discharged as Monitor, and relieved and released from any further obligations, liabilities, responsibilities or duties in its capacity as Monitor pursuant to and in furtherance of the Amended and Restated Initial Order dated October 25, 2013, the Process Order dated November 22, 2013, the Wind-Up Implementation Order, and any other Orders of this Court granted in these CCAA proceedings (collectively, the "**CCAA Orders**").

4. Notwithstanding any provision of this Order, the CCAA Orders, the termination of the CCAA Proceedings or the discharge of the Monitor, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor and its counsel shall continue to have the benefit of, the approvals and protections in favour of the Monitor and its counsel at common law or pursuant to the CCAA or the CCAA Orders, all of which are expressly continued and confirmed, including in connection with any actions taken by the Monitor pursuant to this Order following the CCAA Termination Time.

5. Notwithstanding the discharge of PwC as Monitor and the termination of these CCAA proceedings, the Monitor shall remain Monitor and have the authority to complete or address any matters that may be ancillary or incidental to the CCAA proceedings following the CCAA Termination Time, and in connection therewith PwC and its counsel shall continue to have the benefit of all approvals and protections in favour of the Monitor at common law or pursuant to the CCAA and the CCAA Orders.

STORAGE, RETENTION AND DESTRUCTION PLAN

6. The storage, retention and destruction plan described in Section 4 of the Forty-Third Report of the Monitor dated November 27, 2019 (as may be amended pursuant to and in accordance with the terms of this Order, the "**Storage, Retention and Destruction Plan**") and all steps, transactions and matters contemplated therein, are hereby approved.

7. The Monitor is hereby authorized to take any additional steps, and execute such additional documents as may be necessary or desirable to implement the Storage, Retention and Destruction Plan, and further to implement non-material changes to the Storage, Retention and Destruction Plan without the requirement for further Court approval.

LEAGUE IGW REAL ESTATE INVESTMENT TRUST

8. Without in any way derogating from the Wind-Up Implementation Order, upon and effective as of the time of the filing of a Remaining Yellow Box Entity Discharge Certificate substantially in the form attached hereto as **Schedule "D"** with respect to League IGW Real Estate Investment Trust ("**IGW REIT**") and League REIT Investco Inc. ("**REIT Investco**"):

(a) REIT Investco and 1079403 BC Ltd. in their capacities as trustee**(s),** and League Assets Corp. in its capacity as manager, respectively, under the Declaration of Trust in respect of IGW REIT dated January 31, 2007 (as amended and restated, the "**Declaration of Trust**"), shall be deemed to be discharged from such capacities and to be "Remaining Released Parties" under the Wind-Up Implementation Order; and

(b) IGW REIT together with the Declaration of Trust shall each be and shall hereby be terminated and of no further force or effect.

STAY OF PROCEEDINGS

9. The stay of proceedings provided for in the Initial Order, the Process Order dated November 22, 2013, the Orders pronounced June 27, 2014, October 15, 2014 (as revised on November 19, 2014), March 31, 2015, the Wind-Up Implementation Order dated December 11, 2015, November 18, 2016, December 15, 2017, December 11, 2018 is hereby extended to the

earlier of the CCAA Termination Time and September 30, 2020, solely to the extent provided for in the Wind-Up Implementation Order.

GENERAL PROVISIONS

10. THIS COURT REQUESTS the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial regulatory body of the United States and the states or other subdivisions of the United States, and of any other nation or state, to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

11. The approval of counsel as to form listed as Schedule "B" hereto, except for counsel for the Monitor, is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature

☒ Lawyer for the Monitor
Jeremy Dacks

By the Court

Registrar

Schedule "A"

Corporations

1. 473 Albert St. Office GP Inc.
2. Cowichan District Financial Centre GP Inc.
3. Duncan City Centre GP Inc.
4. Fort St. John Retail GP Inc.
5. Gatineau Centre Development GP Inc.
6. Gatineau Centre Real Estate Development Corporation
7. IGW Diversified Redevelopment Fund GP Inc.
8. IGW Industrial GP Inc.
9. IGW Mortgage Investment Corporation
10. IGW Public GP Inc.
11. IGW REIT GP Inc.
12. IGW Residential Capital GP Inc.
13. League Assets Corp.
14. League Assets GP Inc.
15. League Financial Partners Inc.
16. League Investment Fund Ltd.
17. League Opportunity Fund Ltd.
18. League REIT Investco Inc.
19. Londondale Shopping Centre GP Inc.
20. North Vernon Properties Inc.
21. Residences at Quadra Village GP Inc.
22. Tsawwassen Retail Power Centre GP Inc.

Limited Partnerships

23. 473 Albert St. Office Limited Partnership
24. Cowichan District Financial Centre Limited Partnership
25. Fort St. John Retail Limited Partnership
26. Gatineau Centre Development Limited Partnership
27. IGW Diversified Redevelopment Fund Limited Partnership
28. IGW Industrial Limited Partnership
29. IGW Public Limited Partnership
30. IGW REIT Limited Partnership
31. IGW Residential Capital Limited Partnership
32. League Assets Limited Partnership
33. Londondale Shopping Centre Limited Partnership
34. North Vernon Properties Limited Partnership
35. Redux Duncan City Centre Limited Partnership
36. Residences At Quadra Village Limited Partnership
37. Tsawwassen Retail Power Centre Limited Partnership

Real Estate Investment Trusts

38. League IGW Real Estate Investment Trust

Schedule "B"

LIST OF COUNSEL

Schedule "C"

No. S-137743
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS* ACT, S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF LEAGUE ASSETS CORP. AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

REMAINING YELLOW BOX ENTITIES DISCHARGE CERTIFICATE

RECITALS:

1. Pursuant to an Order of the Honourable Madam Justice Fitzpatrick of the Supreme Court of British Columbia (Vancouver Registry) (the "**Court**") dated October 18, 2013, as amended, PricewaterhouseCoopers Inc. ("**PwC**") was appointed as the Monitor of the Petitioners (the "**Monitor**").

2. Pursuant to an Order of the Honourable Madam Justice Fitzpatrick of the Court dated December 11, 2015 (the "**Wind-Up Order**"), the Court approved the Wind-Up Implementation Plan dated December 4, 2015 (the "**Wind-Up Plan**").

3. Pursuant to the Wind-Up Order and the Order of the Court dated December 6, 2019 (the "**Termination Order**"), after the Monitor, on behalf of the Petitioners, distributes the Liquidation Proceeds to Claimants (excluding Insurance Claimants) with Proven Claims

against the Remaining Yellow Box Entities pursuant to and in accordance with the December 2015 Waterfall and the Wind-Up Order, and upon and effective as of the time of the filing by the Monitor of the Remaining Yellow Box Entities Discharge Certificate:

a. PwC shall be and shall be deemed to be discharged as Monitor of the applicable Remaining Yellow Box Entity and have no further duties, obligations or responsibilities as Monitor of the applicable Remaining Yellow Box Entity, save and except for matters arising from the DO&T Order;

b. John Parkinson shall be deemed to have resigned as a director and/or officer without replacement of the applicable Remaining Yellow Box Entity;

c. Representative Counsel shall be discharged as Representative Counsel with respect to the investors in the applicable Remaining Yellow Box Entity, other than the activities of Representative Counsel that are specifically contemplated by this Order and the DO&T Order;

d. The Remaining Released Parties shall be and shall be deemed to be released and discharged from any and all Remaining Released Claims, and any such Remaining Released Claims shall be released, stayed, extinguished and forever barred and the Remaining Released Parties shall have no liability in respect thereof, provided that the Remaining Released Claims shall not include any claim or liability arising out of any gross negligence or willful misconduct on the part of the Remaining Released Parties;

e. The applicable Remaining Yellow Box Entity shall be considered to be a Completed Yellow Box Entity for the purposes of the Wind-Up Order and the Wind-Up Plan;

f. All Charges (excluding the DO&T Action Charge) as against the applicable Remaining Yellow Box Entity shall be terminated, released and discharged;

g. The Stay of Proceedings shall be lifted with respect to the applicable Remaining Yellow Box Entity;

h. IGW REIT shall be terminated and the Declaration of Trust shall be terminated and of no further force or effect; and

i. REIT Investco and 1079403 BC Ltd. in their capacities as trustee(s), and League Assets Corp. in its capacity as manager, respectively, under the Declaration of Trust, shall be deemed to be discharged from such capacities and to be "Remaining Released Parties" under the Wind-Up Implementation Order.

4. Unless otherwise defined herein, capitalized terms shall have the meaning set out in the Wind-Up Plan and the Termination Order, as applicable.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

THE MONITOR CERTIFIES the following:

1. The Monitor, on behalf of the Petitioners, distributed the Liquidation Proceeds to Claimants (excluding Insurance Claimants) with Proven Claims against IGW REIT pursuant to and in accordance with the December 2015 Waterfall and the Wind-Up Order.

DATED ●

PRICEWATERHOUSECOOPERS INC., in its capacity as Monitor

By: _____
Name:
Title:

Schedule "D"

No. S-137743
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS* ACT, S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF LEAGUE ASSETS CORP. AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

CASE COMPLETION CERTIFICATE

RECITALS:

1. Pursuant to an Order of the Honourable Madam Justice Fitzpatrick of the Supreme Court of British Columbia (Vancouver Registry) (the "**Court**") dated October 18, 2013, as amended, PricewaterhouseCoopers Inc. was appointed as the Monitor of the Petitioners (the "**Monitor**").

2. Pursuant to an Order of the Honourable Madam Justice Fitzpatrick of the Court dated December 6, 2019 (the "**Termination Order**"), the Court released and discharged the Monitor of its duties pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. c. C-36, as amended (the "**CCAA**") with effect upon the Monitor filing a certificate with the

Court which certifies that it has filed a Remaining Yellow Box Entities Discharge Certificate with respect to each of the Petitioners as of the date of the Termination Order.

3. Unless otherwise defined herein, capitalized terms shall have the meaning set out in the Termination Order.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

THE MONITOR CERTIFIES the following:

1. The Monitor has filed a Remaining Yellow Box Entities Discharge Certificate with respect to each of the Petitioners as of the date of the Termination Order.

DATED ●

PRICEWATERHOUSECOOPERS INC., in its capacity as Monitor

By: _____
Name:
Title:

No. S-137743
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS* ACT, S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF LEAGUE ASSETS CORP. AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

ORDER MADE AFTER APPLICATION
(STAY EXTENSION, DISCHARGE AND TERMINATION ORDER)

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, Ontario

Telephone: (416) 362-2111
Facsimile: (416) 862-6666

Tab 4

Court File No. CV-15-10832-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	FRIDAY, THE 18TH
	)	
CHIEF JUSTICE MORAWETZ	)	DAY OF OCTOBER, 2019

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA PHARMACY (SK) CORP., and TARGET CANADA PROPERTY LLC (the "**Applicants**")

DISCHARGE ORDER

THIS MOTION, made by Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as monitor of the Applicants (in such capacity, the "**Monitor**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**"), for an Order, *inter alia*, terminating these proceedings commenced pursuant to the CCAA (the "**CCAA Proceedngs**"), discharging A&M in its capacity as Monitor, and approving the Monitor's fees and disbursements described in its Forty-Second Report, was heard this day at the Courthouse at 330 University Avenue, Toronto, Ontario.

ON READING the Forty-Second Report, including the Monitor's Plan Completion Certificate appended thereto, the affidavit of Douglas R. McIntosh sworn August 27, 2019 and the exhibits thereto, and the affidavit of Jay Carfagnini sworn August 26, 2019 and the exhibits thereto, all filed, and on hearing the submissions of counsel for the Monitor, the Applicants and those other

parties present, no one else appearing for any other person on the service list, although properly served as appears from the affidavit of service, filed:

1. **THIS COURT ORDERS** that capitalized terms used and not defined herein shall have the meanings given to them in the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated January 15, 2015 (the "**CCAA Filing Date**") (as amended and restated on February 11, 2015, the "**Initial Order**") or the Second Amended and Restated Joint Plan of Compromise and Arrangement dated May 19, 2016 (as amended, varied or supplemented from time to time in accordance with the terms thereof, the "**Plan**").

SERVICE

2. **THIS COURT ORDERS** that the time and method of service and notice of this Motion is, to the extent necessary, hereby abridged and validated and that this Motion is properly returnable today without further service or notice thereof.

APPROVAL OF FEES

3. **THIS COURT ORDERS** that (i) the fees and disbursements of the Monitor from July 3, 2016 to August 3, 2019 totaling CAD$1,843,530.99 (including HST) and its estimate of fees and disbursements from August 4, 2019 through completion of remaining activities in connection with these CCAA proceedings of CAD$120,000.00 (inclusive of HST) and (ii) the fees and disbursements of Goodmans LLP in its capacity as legal counsel to the Monitor from July 1, 2016 to August 6, 2019 totaling CAD$2,885,246.66 (including HST) and its estimate of fees and disbursements from August 7, 2019 through completion of remaining activities in connection with these CCAA proceedings of CAD$85,000.00 (inclusive of HST), be and are hereby approved and that no further approval of the fees and disbursements of the Monitor or its counsel is required

(i) in respect of the period prior to the CCAA Termination Date (as defined below), or (ii) in respect of the period from and after the CCAA Termination Date in accordance with paragraph 8 herein.

TERMINATION OF CCAA PROCEEDINGS

4. **THIS COURT ORDERS** that effective on the date of this Order (the "**CCAA Termination Date**"), the CCAA Proceedings shall be terminated without any further act or formality.

RELEASE AND DISCHARGE OF THE MONITOR

5. **THIS COURT ORDERS** that the Monitor has satisfied all of its duties and obligations pursuant to the CCAA and the Orders of this Court granted in the CCAA Proceedings.

6. **THIS COURT ORDERS AND DECLARES** that A&M is hereby discharged as Monitor effective immediately and shall have no further duties, obligations, or responsibilities as Monitor, save and except as set out in paragraph 8 herein.

7. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the termination of the CCAA Proceedings or the discharge of the Monitor, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor and its counsel shall continue to have the benefit of, the approvals and protections in favour of the Monitor and its counsel at common law or pursuant to the CCAA, the Initial Order, or any other Order of this Court in the CCAA Proceedings, all of which are expressly continued and confirmed, including in connection with any actions taken by the Monitor pursuant to this Order following the CCAA Termination Date.

8. **THIS COURT ORDERS** that notwithstanding the discharge of A&M as Monitor and the termination of these CCAA Proceedings, the Monitor shall remain Monitor and have the authority to complete or address any matters that may be ancillary or incidental to the CCAA Proceedings following the CCAA Termination Date, and in connection therewith: (a) A&M and its counsel shall continue to have the benefit of all approvals and protections in favour of the Monitor at common law or pursuant to the CCAA, the Initial Order and all other Orders made in the CCAA Proceedings, and (b) A&M and its counsel shall be paid by the Applicants their reasonable fees and disbursements at their standard rates and charges for all activities undertaken by them pursuant to this Order following the CCAA Termination Date.

9. **THIS COURT ORDERS** that: (a) any distribution from the Final Distribution returned as undeliverable or any cheque from the Final Distribution that has not been cashed, each within six months of the date of this Order, is and shall be deemed to be an undeliverable distribution (each, an "**Undeliverable Distribution**") for the purposes of the Plan and paragraph 10 of this Order; and (b) the funds in respect of each Undeliverable Distribution shall be retained in or returned to the TCC Cash Pool Account for distribution in accordance with paragraph 10 of this Order.

10. **THIS COURT ORDERS** that:

(a) if the aggregate of (i) any Undeliverable Distributions; (ii) any positive balance remaining relating to Administrative Reserve Costs paid by the Target Canada Entities to the recipients thereof in excess of the actual final fees, disbursements or other costs of such recipients; and (iii) any other Cash proceeds that may come into the Target Canada Entities' estates from and after the date of this Order, equal or exceed $700,000, the Target Canada Entities shall effect a distribution of such Cash (less the costs to so distribute) to Affected Creditors (other than Convenience Class

Creditors and Landlord Guarantee Creditors in respect of their Landlord Guarantee Creditor Base Claim Amounts) with Proven Claims in an amount equal to such Affected Creditor's Pro Rata Share of such Cash, in the manner set out in the Plan; and

(b) if the aggregate of clause (i), (ii) and (iii) above is less than $700,000, the Target Canada Entities shall distribute the amount of such Cash in any of their possession to The United Way of Greater Toronto.

11. **THIS COURT ORDERS** that, without in any way limiting the releases set out in Article 7 of the Plan or the provisions of paragraphs 29 or 30 of the Sanction and Vesting Order, the Target Canada Entities, any Directors and Officers holding such office following the Plan Implementation Date, and their respective advisors, including legal counsel, and the Monitor, A&M, the Plan Sponsor, the Plan Sponsor Subsidiaries, and their respective directors, officers, employees and advisors, including legal counsel (collectively, the "**Released Parties**"), shall be and are hereby forever irrevocably released and discharged from any and all present and future claims, liabilities, indebtedness, demands, actions, causes of action, suits, damages, judgments and obligations of whatever nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act, omission, or other occurrence existing or taking place prior to the date of this Order or completed pursuant to the terms of this Order in any way relating to, arising out of, or in respect of the implementation of the Plan or the terms of this Order (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing herein shall

release or discharge any Released party if such Released Party is judged by the express terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct.

RELEASE AND DISCHARGE OF CHARGES

12. **THIS COURT ORDERS** that the Administration Charge and the Directors' Charge (each as defined in the Initial Order) are each hereby discharged, released and terminated.

RECORDS

13. **THIS COURT ORDERS** that all records of the Target Canada Entities stored at any Iron Mountain facility where records are currently being held may be destroyed at any time on or after June 30, 2023.

GENERAL

14. **THIS COURT ORDERS** that the Applicants or the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to the Plan and/or this Order.

15. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such

assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

17. **THIS COURT ORDERS** that the Applicants and the Monitor be 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 assistance in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:
OCT 18 2019
PER / PAR:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TARGET CANADA CO., *et al*

Court File No. CV-15-10832-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Passing of Accounts and Discharge of the Monitor)

GOODMANS LLP
Barristers and Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Melaney Wagner LSO#: 44063B
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Lawyers for the Monitor

Tab 5

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Walter Energy Canada Holdings, Inc. (Re),* 2018 BCSC 1135

Date: 20180709
Docket: S1510120
Registry: Vancouver

In the Matter of the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36 as Amended

And

In the Matter of the *Business Corporations Act,* S.B.C. 2002, c. 57, as Amended

And

In the Matter of a Plan of Compromise and Arrangement of New Walter Energy Canada Holdings, Inc., New Walter Canadian Coal Corp., New Brule Coal Corp., New Willow Creek Coal Corp., New Energybuild Holdings ULC

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

Counsel for the Petitioners:	Marc Wasserman Patrick Riesterer
Counsel for United Mine Workers of America 1974 Pension Plan and Trust:	Tevia Jeffries
Counsel for Warrior Met Coal, LLC	Matthew Nied
Counsel for the United Steelworkers, Local 1-424:	Stephanie Drake
Counsel for KPMG Inc., Monitor:	Peter Reardon Vicki Tickle

Place and Date of Hearing/Judgment with Reasons to Follow:	Vancouver, B.C. July 3, 2018
Place and Date of Written Reasons:	Vancouver, B.C. July 9, 2018

INTRODUCTION

[1] This is the final chapter of these *Companies' Creditors Arrangement Act,* R.S.C. 1985, c C-36, as amended (the “CCAA") proceedings.

[2] These proceedings began approximately two-and-a-half years ago. The realizations from the significant assets of the petitioners, now called the “New Walter Canada Group”, consisted primarily of coal mining assets located in British Columbia and the United Kingdom.

[3] The main issue within the proceedings was the distribution of asset recoveries in light of various claims advanced by the stakeholders. Those stakeholders include the unionized workers in British Columbia, represented by the United Steelworkers, Local 1-424 (the “USW”), the United Mine Workers of America 1974 Pension Plan and Trust (the “1974 Plan”) and Warrior Met Coal, LLC (“Warrior”).

[4] After significant contested proceedings, appeals filed and extensive negotiations between the New Walter Canada Group and all stakeholders, assisted by the CRO and the Monitor, a settlement was reached in September 2017. The provisions of the Settlement Term Sheet, as defined and approved in accordance with my earlier reasons should be read with these reasons: *Walter Energy Canada Holdings, Inc. (Re),* 2017 BCSC 1968 (the “Settlement Reasons”).

[5] After the completion of further procedures in these *CCAA* proceedings, the petitioners now apply for a Sanction Order. In these reasons, I have capitalized certain terms, as set out in various court orders and related documents, including the plan.

BACKGROUND

[6] On December 7, 2015, this Court granted an Initial Order in favour of the initial corporate group comprising the petitioners, called “Old Walter Canada Group”, pursuant to the *CCCA*. The stay granted in the Initial Order has been extended numerous times in this proceeding and presently expires December 31, 2018.

[7] The realization procedures undertaken and results achieved by Mr. Aziz, the CRO, have been very successful. At present, the Monitor estimates that approximately $61.5 million will be available in December 2018 for distribution to the stakeholders.

[8] On August 16, 2016, this Court granted a Claims Process Order to establish a claims process to be implemented by the Old and New Walter Canada Groups.

[9] As stated above, in September 2017, the New Walter Canada Group, the 1974 Plan and Warrior agreed to a Settlement Term Sheet that resulted in a full and final settlement of most of the outstanding issues among these stakeholders in these *CCAA* proceedings: Settlement Reasons at paras. 11-30. The Settlement Term Sheet is a complex document, but can be generally summarized as providing for:

(a) payment in full of Proven Claims of Affected Creditors;

(b) payment of $13 million to the 1974 Plan in full satisfaction of its claim against the New Walter Canada Group within these proceedings;

(c) payment of $75,000 to the USW in respect of its costs in these proceedings; and

(d) a substantial distribution to Warrior in respect of its Deemed Interest Claim in full satisfaction of that Claim.

[10] On October 6, 2017, the Settlement Term Sheet was approved by this Court, after considering in particular that the Affected Claims (which included those advanced by the USW) were to be paid in full: Settlement Reasons at paras. 31-42.

[11] The implementation of the Settlement Term Sheet was conditional upon the completion of the claims process to identify any further claims. On August 15, 2017, this Court granted a Claims Process Amendment Order to identify remaining Restructuring Claims and Directors/Officers Claims that had not yet been solicited.

[12] That further claims process has now been completed and the New Walter Canada Group and the Monitor have determined that there are sufficient funds to make the distributions contemplated in the Settlement Term Sheet after establishing certain reserves for Disputed Claims and other matters. In particular, it is anticipated that there will be sufficient Available Funds to pay the Affected Creditors in full, pay the 1974 Plan Settlement Amount and pay the USW Settlement Amount with significant sums remaining to pay a large amount to Warrior in respect of its Deemed Interest Claim.

[13] On May 28, 2018, the New Walter Canada Group filed its Original Plan, as developed by it in consultation with the Monitor and certain stakeholders. On May 31, 2018, the New Walter Canada Group obtained a Meeting Order granting leave to file the Original Plan and authorizing certain amendments to the Original Plan, pursuant to s. 4 of the *CCAA*.

[14] A somewhat unusual aspect of the Meeting Order was that the New Walter Canada Group's class of unsecured creditors (including the Affected Creditors and Warrior) would be deemed to hold meetings and deemed vote their Claims in favour of the Original Plan or, if amended, any later filed plan. I considered that this was an expeditious manner to proceed since the Settlement Term Sheet provided for payment in full to the Affected Creditors and in light of Warrior's agreement to the Settlement Term Sheet. On May 21, 2014, such a deeming provision was granted by Justice Spivak in a *CCAA* meeting order where the affected creditors were similarly to be paid in full under the plan filed in those proceedings (*Re Arctic Glacier Income Fund*, The Queen's Bench, Winnipeg Centre, File No. CI 12-01-76323).

[15] The essential terms of the Original Plan were to implement what was contained in the Settlement Term Sheet, including payment in full of Proven Claims owed to Affected Creditors.

[16] The Meeting Order authorized the New Walter Canada Group to call the Creditors Meetings and outlined the notice that was to be provided to creditors regarding the meetings. On June 22, 2018, in advance of the deemed meetings, the

New Walter Canada Group amended the Original Plan, as I will describe in more detail below (the "Amended Plan"). The materials establish that the notice procedures in respect of the Amended Plan have been followed. The notice provisions included specific mailings to the Affected Creditors, specific notice to Warrior, posting of materials on the Monitor's website and newspaper notices.

[17] The notice to Affected Creditors included a request that any person with a concern regarding the Amended Plan should advise the Monitor of such concerns by June 25, 2018. Twelve such Affected Creditors did provide responses, but no person took exception to the substance of the Amended Plan or the meeting and voting process set out in the Meeting Order. For the most part, the responses were to express frustration in the delay of distribution.

[18] On June 27, 2018, the deemed meetings and voting took place:

(a) the consolidated class of creditors, comprised of all of the Affected Creditors, including Warrior with respect to its Shared Services Claim (the "Affected Creditors Class") was established to vote on the Amended Plan. The Affected Creditors Class were deemed to have met and voted unanimously in favour of a resolution to approve the Amended Plan; and

(b) Warrior was the only creditor entitled to vote its Deemed Interest Claim and it was deemed to have voted in favour of a resolution to approve payment of that Claim in accordance with the Amended Plan.

DISCUSSION

[19] Section 6(1) of the *CCAA* provides this Court with express jurisdiction to sanction a plan of compromise or arrangement where the requisite double majority of creditors has approved the plan.

[20] The general requirements for court approval of a *CCAA* plan are well established:

(a) there must be strict compliance with all statutory requirements;

(b) all materials filed and procedures carried out must be examined to determine if anything has been done or purported to have been done which is not authorized by the CCAA; and

(c) the plan must be fair and reasonable.

See *Canadian Airlines Corp.,* 2000 ABQB 442 at para. 60, leave to appeal denied, 2000 ABCA 238, aff'd 2001 ABCA 9; *Sino-Forest Corp.,* 2012 ONSC 7050 at para. 51, leave to appeal denied, 2013 ONCA 456; *Bul River Mineral Corporation*, 2015 BCSC 113 at para. 40; *TLC The Land Conservancy of British Columbia, Inc.*, 2015 BCSC 656 at para. 47.

a) Has there been strict compliance with statutory requirements?

[21] I am satisfied that there has been strict requirements with all provisions of the *CCAA*. This is supported by the evidence of Mr. Aziz, the CRO, including that found in his most recent affidavit #23 sworn June 26, 2018.

[22] In addition, in its Nineteenth Report dated June 27, 2018, the Monitor states that to the best of its knowledge, the petitioners have met all *CCAA* requirements and complied with all court orders granted in this proceeding.

[23] Further, s. 6 of the *CCAA* has been complied with in terms of a sanction order being only available if the plan contains certain specified provisions concerning crown claims, employee claims and pension claims:

a) the Amended Plan satisfies the requirements of s. 6(3) because it provides that the Monitor shall, within six months after the Plan Sanction Date, pay in full, on behalf of the New Walter Canada Group, to Her Majesty in Right of Canada or any province all amounts of any kind that could be subject to a demand under s. 6(3) of the *CCAA* that were outstanding on the Filing Date and which have not been paid by the Plan Implementation Date;

b) the Amended Plan does not provide for payment of any "Employee Priority Claims" or "Pension Priority Claims" pursuant to ss. 6(5) and 6(6) of the *CCAA* because no such claims exist; and

c) the Amended Plan complies with s. 6(8) of the *CCAA* in that the New Walter Canada Group are distributing all their available assets to or on behalf of their creditors. No distribution is to be made on account of equity claims.

b) Has anything been done that is not authorized by the *CCAA*?

[24] Again, no issues arise in this respect. No stakeholder has raised any such concerns.

[25] Throughout these proceedings, the Monitor has updated the Court on the progress of the proceedings and its review of the activities of the petitioners, citing no irregularities. Indeed, on each stay extension application, the Monitor has advised that, in its view, the petitioners were acting in good faith and with due diligence throughout the course of these proceedings. See *Canwest Global Communications Corp. Re,* 2010 ONSC 4209 at para. 17.

c) Is the Amended Plan fair and reasonable?

[26] In the Settlement Reasons at paras. 31-42, I found the Settlement Term Sheet to be fair and reasonable. As the Amended Plan simply implements the terms of that document, it must necessarily follow, with one minor exception discussed below, that the Amended Plan is also fair and reasonable.

[27] This is not a restructuring plan by which the New Walter Canada Group is to re-emerge. The Amended Plan is simply a means by which the monies realized from the asset dispositions by the petitioners and the CRO will be distributed to the stakeholders. In that circumstance, in addition to the other benefits outlined in the Settlement Reasons:

(a) the Amended Plan will result in full payment of Proven Claims owed to Affected Creditors, which comprise the vast majority of the New Walter Canada Group's creditors. By any measure, such a result in an insolvency proceeding is rarely achieved;

(b) the Amended Plan will also resolve the heavily contested claim advanced by the 1974 Plan. The compromise of that claim at $13 million has been accepted by the 1974 Plan, a sophisticated litigant who no doubt has fully assessed the merits of doing so after receiving legal advice; and

(c) similarly, Warrior, another sophisticated litigant, has agreed to a compromise of its claim as against the Available Net Proceeds, having agreed that the settlement amount for the 1974's Plan's claim is to come from that fund, rather than detract from the full payment to the Affected Creditors.

[28] The only issue that arose in relation to the fairness and reasonableness of the Original Plan related to the releases provided for in Article 9, and specifically Article 9.1 entitled "CCAA Plan Releases".

[29] At the hearing on May 31, 2018, when the Meeting Order was sought, I questioned the New Walter Canada Group's counsel as to the appropriateness of the broad range of releases in the Original Plan and the naming of some of the releasees set out in Article 9.1. For example, the Original Plan provided for a general release in favour of the Financial Advisor, PJT Partners LP, despite that entity having only a limited role in the sales and solicitation process. In addition, there was an amorphous reference to an "auditor, financial advisor …. consultant, and agent" of the primary releasees, being the petitioners, the Monitor, the CRO and Directors and Officers of the petitioners

[30] In *Bul River*, I discussed the court's jurisdiction to approve a plan of arrangement that includes releases and relevant considerations in terms of whether such releases are fair and reasonable:

> [77] The *CCAA* does not contain any express provisions either permitting or prohibiting the granting of releases, including third party releases, as part of a plan of compromise or arrangement. Nevertheless, there is authority to the effect that the court may approve releases found in a plan of arrangement while exercising its statutory jurisdiction under the *CCAA*. The leading decision is *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 (CanLII), leave to appeal to S.C.C. refused (2008), 390 N.R. 393 (note). At paras. 40-52 of *Metcalfe*, a plan containing third party releases was sanctioned. At para. 46, the court stated that such jurisdiction may be exercised where the releases are "reasonably related to the proposed restructuring".
>
> [78] The approach in *Metcalfe* was adopted in *Canwest* at paras. 28-30. The court in *Canwest* noted that third party releases should be the exception and not requested or granted as a matter of course: para. 29.
>
> [79] In *Kitchener Frame Ltd. (Re)*, 2012 ONSC 234 (CanLII), although in the context of a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, the court summarized the requirements that would justify third party releases:
>
> > [80] In *Metcalfe*, the Court of Appeal for Ontario held that the requirements that must be satisfied to justify third-party releases are:
> >
> > > a) the parties to be released are necessary and essential to the restructuring of the debtor;
> > >
> > > b) the claims to be released are rationally related to the purpose of the Plan … and necessary for it;
> > >
> > > c) the Plan ... cannot succeed without the releases;
> > >
> > > d) the parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan...; and
> > >
> > > e) the Plan … will benefit not only the debtor companies but creditors generally.
>
> [80] *Metcalfe* has been applied in numerous decisions where third party releases have been approved: see, for example, *Sino-Forest Corp. (Re)*, 2012 ONSC 7050 (CanLII) at paras. 70-77; *SkyLink Aviation Inc. (Re)*, 2013 ONSC 2519 (CanLII) at paras. 30-33. In British Columbia, see *Angiotech Pharmaceuticals, Inc. (Re)*, 2011 BCSC 450 (CanLII) at para. 12, where the court sanctioned a plan that included releases in favour of various persons, including the monitor, financial advisors and the interim lender.
>
> [81] It remains the case that any person proposing releases in a plan of arrangement, and any party seeking a court order sanctioning or even supplementing such releases, must ensure, from the outset, that a proper rationale exists for them.

[31] In his affidavit, Mr. Aziz describes that, arising from concerns expressed by the Court, the Original Plan was amended to considerably narrow not only those persons who will be released, but also the scope of some releases. He states that,

broadly speaking, the Amended Plan now provides for full and final releases for three groups of releasees:

(a) The New Walter Canada Group Parties: the New Walter Canada Group, the Directors, the Officers, and all present and former Employees who filed or could have filed indemnity claims against the Old Walter Canada Group or the New Walter Canada Group, and all affiliates and legal counsel thereof;

(b) The Restructuring Support Parties: the Monitor, KPMG Inc., and its affiliates; the CRO; Philip L. Evans Jr., in his capacity as consultant to the Old and New Walter Canada Groups; the Financial Advisor, but only with respect to its activities regarding the sale and investor solicitation process conducted in connection with the SISP Order; and, all affiliates, partners, members and legal counsel thereof; and

(c) The Derivative Released Parties: any person claiming to be liable derivatively through any of the foregoing persons.

[32] The Monitor considers the releases contained in the Amended Plan to be fair and reasonable in the circumstances.

[33] I conclude:

a) the Restructuring Support Parties have made necessary and tangible contributions to this *CCAA* proceeding. As noted by all counsel, courts have routinely sanctioned releases in favour of third parties such as the monitor, legal counsel, financial advisors, and other parties retained to advise the petitioner(s) or the Court throughout the conduct of a *CCAA* proceeding and who, by doing so, contribute to the success of a *CCAA* proceeding;

b) the narrowing of the releases has resulted in a more focussed basis for the releases such that they are more rationally connected to the purposes of the *CCAA* and the Amended Plan given their respective contributions

toward this successful restructuring. For example, the release in favour of the Financial Advisor has been limited to its activities conducted in connection with the SISP Order. In addition, the Amended Plan is consistent with the scope of protections for the Financial Advisor set out in the SISP Order. The releases previously proposed for the "financial advisors, auditor, agents and consultants" were eliminated. The Amended Plan retained a release only for one consultant, Mr. Evans, who assisted the Old and New Walter Canada Groups throughout the sales process. Mr. Evans also assisted the New Walter Canada Group with respect to the Unresolved Claim and will continue to do so; and

c) the releases in favour of the New Walter Canada Group Parties are also typically granted. In addition, the Amended Plan does not release or discharge any petitioner from any Excluded Claim, any Director from any Claim that cannot be compromised pursuant to s. 5.1(2) of the *CCAA*, any releasee other than the petitioners and the Directors and Officers from liability for gross negligence or willful misconduct, or any releasee from any obligation created by or existing under the Amended Plan or any related document.

[34] The final factor raised by the New Walter Canada Group is that no stakeholder registered any objection to the releases in the Amended Plan. In this case, that factor can not be taken too far, where sophisticated parties agreed to those releases in both the Original Plan and Amended Plan and perhaps less sophisticated creditors were not concerned given that they expect full payment.

[35] It remains the case that, when exercising its jurisdiction, the Court must consider the appropriateness of any releases at two different junctures: firstly, whether it is appropriate to approve the filing of a plan, typically when a meeting order is sought (such as happened here); and secondly, when there is an application for a sanction order. In the latter circumstance, the court may determine that

releases are not fair and reasonable despite a plan having been approved by the creditors in accordance with the *CCAA* procedures.

[36] All of this is to say that it is incumbent upon the drafters of any *CCAA* plan to consider, *at the outset of that exercise*, the appropriateness of any releases sought and whether the necessary support is either before the court or can be put before the court at both junctures mentioned above. This will avoid any concerns or issues that may later develop either from a stakeholder or from the court while exercising its jurisdiction under the *CCAA* to provide oversight and safeguard all interests, whether formal objections are raised or not.

[37] I find that the releases in the Amended Plan are appropriate in the circumstances and do not detract from the overall fairness and reasonableness of the Amended Plan.

CONCLUSION

[38] The Sanction Order is granted on the terms sought, including that:

a) the Amended and Restated Plan of Compromise and Arrangement of the New Walter Canada Group dated June 22, 2018 is sanctioned and approved;

b) the New Walter Canada Group and the Monitor are authorized to take all steps necessary to implement the Amended Plan; and

c) the New Walter Canada Group and the Monitor are authorized to take such steps as may be necessary following the Plan Implementation Date to make distributions and complete such transactions as are contemplated by the Amended Plan, to seek an orderly wind-down or other process acceptable to the New Walter Canada Group for Energybuild, to complete the Claims Process, and to address any other matters that arise in connection with the *CCAA* Proceedings.

"Fitzpatrick J."