



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

NOTICE OF APPLICATION

Names of applicants: 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 (the "**New Walter Canada Group**")

To: Service List attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the applicants to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on July 11, 2017 at 9:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Approval and Vesting Order substantially in the form attached hereto as **Schedule "B"**.
2. A Sealing Order substantially in the form attached hereto as **Schedule "C"**.

Part 2: FACTUAL BASIS

Introduction

1. Reference is made to the facts set out in the 11th Affidavit of William E. Aziz (the "**Eleventh Aziz Affidavit**"), and the Confidential 12th Affidavit of William E. Aziz (the "**Confidential Affidavit**").
2. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Eleventh Aziz Affidavit, the orders pronounced and the pleadings filed in these proceedings.
3. On December 7, 2015, this Honourable Court granted an Initial Order in favour of the Old Walter Canada Group pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

4. On January 5, 2016, this Honourable Court granted an order approving, *inter alia*, a sale and investment solicitation process ("**SISP**") for the business and property of the Old Walter Canada Group.
5. On August 16, 2016, this Honourable Court granted an order approving the sale of the majority of the Assets of the Old Walter Canada Group to Conuma. The asset purchase agreement with Conuma (the "**Conuma APA**") included certain conditions precedent to the purchase of the BelSax Assets, including obtaining a waiver or satisfaction of Peace River Coal Inc.'s ("**PRC**") right of first refusal ("**ROFR**") under the BelSax LPA.
6. The members of the New Walter Canada Group, except for Cambrian Energybuild Holdings ULC ("**Cambrian**"), became Petitioners in these CCAA proceedings upon being incorporated pursuant to an order of this Honourable Court pronounced on December 7, 2016.
7. The BelSax Assets were transferred from the Old Walter Canada Group to the New Walter Canada Group pursuant to the Order of this Honourable Court made December 21, 2016.

Approval and Vesting Order

8. On February 1, 2017, Conuma materially increased the purchase price offered to acquire the BelSax Assets and made other significant changes to its offer, and then improved the proposed purchase price again during subsequent negotiations.
9. The New Walter Canada Group received an executed third party offer from Conuma on April 24, 2017, and signed an indication of its willingness to accept that third party offer on April 27, 2017, which triggered the ROFR.
10. On May 2, 2017, the New Walter Canada Group delivered (i) Conuma's offer; (ii) a corresponding offer to sell the BelSax Assets to PRC on substantially the same terms, as required by the BelSax LPA; and (iii) an alternative request that PRC waive the ROFR. This triggered a 45-day review period under the BelSax LPA.
11. On June 5, 2017, the New Walter Canada Group received an executed copy of the BelSax APA indicating PRC's exercise of the ROFR and its willingness to acquire the BelSax Assets on substantially the same terms as set out in Conuma's third party offer.
12. On June 8, 2017, the Monitor received a cheque from PRC for the deposit required under the BelSax APA.
13. The BelSax Assets have been extensively marketed, including pursuant to the SISP.
14. The net cash proceeds of the Transaction are higher than the cash proceeds for the BelSax Assets provided under the Conuma APA, which was previously approved by this Honourable Court.
15. The ROFR and the tag along right limit the marketability of the BelSax Assets.
16. The New Walter Canada Group has consulted with the Monitor regarding the Transaction.
17. The Transaction is described in more detail in the Eleventh Aziz Affidavit.
18. A complete and unredacted copy of the BelSax APA is attached as Confidential Exhibit "A" to the Confidential Affidavit.

Part 3: LEGAL BASIS

Sales of Assets

1. Section 36(1) of the CCAA allows courts to authorize the sale of a debtor company's assets out of the ordinary course of business:

Restriction on disposition of business assets

36. (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

2. Subsection 36(3) sets out the factors courts are to consider in determining whether to approve a sale:

Factors to be considered

- (3) In deciding whether to grant the authorization, the court is to consider, among other things,
 - (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - (d) the extent to which the creditors were consulted;
 - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

- (4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that
 - (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
 - (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

- (5) For the purpose of subsection (4), a person who is related to the company includes
- (a) a director or officer of the company;
 - (b) a person who has or has had, directly or indirectly, control in fact of the company; and
 - (c) a person who is related to a person described in paragraph (a) or (b).
3. Where the Monitor is of the view that the sale price and terms of the sale agreement are commercially reasonable and satisfactory and where the sale is supported by many stakeholders and not opposed by anyone, courts will approve the sale.

Comstock Canada Ltd. (Re), 2014 ONSC 493

4. The New Walter Canada Group made extensive efforts to canvass the market and find a suitable price for the BelSax Assets including during the Court-approved SISP leading to the Conuma APA.
5. It is anticipated that the Monitor's 11th Report will state that the Monitor supports the Transaction.
6. PRC is not related to any member of the Walter Canada Group.
7. The consideration to be received in respect of the assets subject to the Transaction is reasonable and fair, taking into account their market value.
8. Accordingly, it is appropriate that the Transaction, as set out in the APA, be approved.

Sealing Documents

9. The following two-part test applies when determining whether public access to a court document may be restricted:
- (a) Is the order necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk?
 - (b) Do the salutary effects of the sealing order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings?

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41
Sahlin v. Nature Trust of British Columbia, Inc., 2010 BCCA 516

10. The unredacted copy of the BelSax APA that is attached to Confidential Affidavit contains confidential business information.
11. The Purchase Price and certain other terms of the BelSax APA are commercially sensitive and should not be disclosed at any point before the Transaction successfully closes. It is not necessary to disclose the exact price because other terms of the Asset Purchase Agreement have been disclosed.

12. Further, the terms of the Third Party Offer Package and certain terms of the BelSax LPA are commercially sensitive, contain information that would not normally be publically available, and should not be publically disclosed
13. The prejudice of disclosing the confidential terms of the BelSax APA report outweighs the potential harm, if any, if the Confidential Affidavit were to be sealed.
14. Accordingly, it is appropriate that the Confidential Affidavit be sealed.
15. The New Walter Canada Group specifically relies on:
 - (a) *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and in particular sections 11, 11.02, 19 and 36 thereof;
 - (b) *Supreme Court Civil Rules*, B.C. Reg. 241/2010, as amended, including Rules 8-1 and 13-1 thereof;
 - (c) the inherent and equitable jurisdiction of this Honourable Court; and
 - (d) such further and other grounds as counsel may advise and this Honourable Court may deem just.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #11 of William E. Aziz made June 27, 2017;
2. Confidential Affidavit #12 of William E. Aziz made June 27, 2017;
3. Monitor's Eleventh Report, to be filed;
4. pleadings and other materials filed herein; and
5. such further and other materials as counsel may advise and this Honourable Court may permit.

The applicants estimate that the application will take 60 minutes.

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master. The Honourable Madam Justice Fitzpatrick is seized of these proceedings and the hearing of this application has been arranged with Trial Scheduling.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding; and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;

- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

June 27, 2017
Dated



Signature of lawyers for the Petitioners

Osler, Hoskin & Harcourt LLP
(Marc Wasserman, Patrick Riesterer & Mary Paterson)

<p>To be completed by the court only:</p> <p>Order made</p> <p><input type="checkbox"/> in the terms requested in paragraphs _____ of Part 1 of this notice of application</p> <p><input type="checkbox"/> with the following variations and additional terms:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Date: _____</p> <p style="text-align: right;">Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master</p>
--

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- oral matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

SCHEDULE "A"

See attached

SERVICE LIST

<p>Osler, Hoskin & Harcourt LLP Box 50, 1 First Canadian Place Toronto, Ontario, Canada M5X 1B8</p> <p>Marc Wasserman Email: mwasserman@osler.com Tel: 416-862-4907</p> <p>Mary Paterson Email: mpaterson@osler.com Tel: 416-862-4924</p> <p>Emmanuel Pressman Email: epressman@osler.com Tel: 416-862-4903</p> <p>Patrick Riesterer Email: priesterer@osler.com Tel: 416-862-5947</p>	<p>Counsel for the Petitioners</p>
<p>Longview Communications Inc. Suite 612 – 25 York Street Toronto, ON Canada M5J 2V5</p> <p>Joel Shaffer Email: jshaffer@longviewcomms.ca</p> <p>Suite 2028 – 1055 West Georgia Vancouver, BC Canada V6E 3P3</p> <p>Alan Bayless Email: abayless@longviewcomms.ca</p> <p>Robin Fraser Email: rfraser@longviewcomms.ca</p>	<p>Communications Advisor to the Petitioners</p>
<p>KPMG Inc. 333 Bay Street, Suite 4600 Toronto, ON M5H 2S5</p> <p>Philip J. Reynolds Email: pjreynolds@kpmg.ca</p> <p>Jorden Sleeth Email: jsleeth@kpmg.ca</p> <p>KPMG Inc. PO Box 10426 777 Dunsmuir Street Vancouver, BC V7Y 1K3 Canada</p> <p>Anthony Tillman</p>	<p>Monitor</p>

<p>Email: atillman@kpmg.ca</p> <p>Mark Kemp-Gee Email: mkempgee@kpmg.ca</p> <p>Mark Clark Email: maclark@kpmg.ca</p>	
<p>McMillan LLP Royal Centre, 1055 West Georgia Street Suite 1500, PO Box 11117</p> <p>Wael Rostom Email: wael.rostom@mcmillan.ca</p> <p>Peter Reardon Email: peter.reardon@mcmillan.ca</p> <p>Caitlin Fell Email: caitlin.fell@mcmillan.ca</p> <p>Copy to: Lori Viner Email: lori.viner@mcmillan.ca</p>	Counsel to KPMG Inc.
<p>Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, New York 10019</p> <p>Fax: 212-757-3990 Tel: 212-373-3000</p> <p>Stephen Shimshak, Email: sshimshak@paulweiss.com</p> <p>Kelly Cornish, Email: kcornish@paulweiss.com</p> <p>Claudia Tobler Email: ctobler@paulweiss.com</p> <p>Daniel Youngblut Email: dyoungblut@paulweiss.com</p> <p>Michael Rudnick Email: mrudnick@paulweiss.com</p>	Counsel to Walter Energy, Inc.
<p>White & Case LLP 1155 Avenue of the Americas New York, New York 10036-2787</p> <p>Fax: 212.819.8200 Tel: 212.819.8567</p> <p>Scott Greissman Email: sgreissman@whitecase.com</p> <p>Elizabeth Feld</p>	US Counsel to Morgan Stanley Senior Funding, Inc., as Administrative Agent and Collateral Agent under the First Lien Credit Facility

<p>Email: efeld@whitecase.com</p>	
<p>Stikeman Elliott LLP 199 Bay Street, Suite 4900 Toronto, Ontario M5L 1B9</p> <p>Tel: 416-869-6820 Fax: 416-947-9477</p> <p>Kathryn Esaw Email: kesaw@stikeman.com</p>	<p>Canadian Counsel to Morgan Stanley Senior Funding, Inc., as Administrative Agent and Collateral Agent under the First Lien Credit Facility</p>
<p>Akin Gump Strauss Hauer & Feld LLP One Bryant Park Bank of America Tower New York, New York 10036-6745</p> <p>Fax: 212-872-1002 Tel: 212-872-8076</p> <p>Ira Dizengoff, Email: idizengoff@akingump.com</p> <p>Lisa G. Beckerman, Email: lbeckerman@akingump.com</p> <p>Maurice L. Brimmage Email: mbrimmage@akingump.com</p> <p>James Savin Email: jsavin@akingump.com</p>	<p>U.S. Counsel to the Steering Committee of First Lien Creditors of Walter Energy, Inc.</p>
<p>Cassels Brock & Blackwell LLP 2200 HSBC Building, 885 West Georgia Street, Vancouver, BC, V6C 3E8</p> <p>Fax: 604 691 6120 Tel: 604 691 6121</p> <p>Steven Dvorak Email: sdvorak@casselsbrock.com</p> <p>Ryan Jacobs Email: rjacobs@casselsbrock.com</p> <p>Natalie Levine Email: nlevine@casselsbrock.com</p> <p>Matthew Nied Email : mnied@casselsbrock.com</p>	<p>Canadian Counsel to the Steering Committee of First Lien Creditors of Walter Energy, Inc.</p>
<p>Victory Square Law Office 500-128 West Pender Street Vancouver, BC V6B 1R8</p>	<p>Canadian Counsel to the United Steelworkers, Local 1-424</p>

<p>Craig Bavis Email: cbavis@vslo.ca Tel: 604-684-8421 Fax: 604-684-8427</p> <p>Jeff Sanders Email: j.sanders@vslo.bc.ca</p>	
<p>Dentons Canada LLP 20th Floor, 250 Howe Street Vancouver, BC Canada V6C 3R8</p> <p>John R. Sandrelli Email: john.sandrelli@dentons.com Tel : 604-443-7132</p> <p>Craig Dennis Email : craig.dennis@dentons.com Tel : 604-648-6507</p> <p>Tevia Jeffries Email: tevia.jeffries@dentons.com</p> <p>Miriam Dominguez Email: miriam.dominguez@dentons.com</p>	<p>Canadian Counsel to the United Mine Workers of America 1974 Pension Plan and Trust</p>
<p>Morgan Lewis & Bockius LLP One Federal St. Boston, MA 02110-1726 United States</p> <p>Julia Frost-Davies Email: julia.frost-davies@morganlewis.com</p> <p>Morgan Lewis & Bockius LLP 1701 Market St. Philadelphia, PA19103-2921 United States</p> <p>John C. Goodchild, III Email: goodchild@morganlewis.com</p> <p>Rachel Jaffe Mauceri Email: rmauceri@morganlewis.com</p>	<p>US Counsel to the United Mine Workers of America 1974 Pension Plan and Trust</p>
<p>Mooney, Green, Saindon, Murphy & Welch, P.C. 1920 L Street, NW, Suite 400 Washington, DC 20036</p> <p>Paul Green Email: pgreen@mooneygreen.com</p> <p>John Mooney Email: jmooney@mooneygreen.com</p>	<p>US Co- counsel to the United Mine Workers of America 1974 Pension Plan and Trust</p>

<p>Ministry of Justice and Attorney General Legal Services Branch P.O. Box 9289 Stn Prov Govt 4th Floor – 1675 Douglas Street Victoria, BC V8W 9J7</p> <p>Fax: 250-387-0700</p> <p>David Hatter Tel: 250-387-1274 Email: David.Hatter@gov.bc.ca AGLSBRevTax@gov.bc.ca</p> <p>Aaron Welch Tel: 250-356-8589 Email: Aaron.Welch@gov.bc.ca AGLSBRevTax@gov.bc.ca</p>	<p>Counsel to Her Majesty the Queen in right of the Province of British Columbia</p>
<p>Department of Justice Government of Canada 900 – 840 Howe Street Vancouver, BC V6Z 2S9</p> <p>Neva Beckie Email: neva.beckie@justice.gc.ca</p>	<p>Counsel to Her Majesty the Queen in right of Canada</p>
<p>PJT Partners LP 280 Park Ave. New York, NY 10017</p> <p>Steve Zelin Email: zelin@pjtpartners.com</p>	<p>Financial Advisor</p>
<p>Blue Tree Advisors 32 Shorewood Place Oakville, ON L6K 3Y4</p> <p>William E. Aziz Email: baziz@bluetreadvisors.com</p>	<p>Chief Restructuring Officer</p>
<p>Miller Thomson LLP Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1</p> <p>Jeffrey Carhart Email: jcarhart@millertomson.com</p>	<p>Counsel to Mitsui Matsushima Co., Ltd.</p>
<p>Conuma Coal Resources Limited 15 Appledore Lane, P.O. Box 87 Natural Bridge, Virginia 24578</p> <p>Tom Clarke Email: tom.clarke@kissito.org</p>	<p>Purchaser of certain assets of the Walter Canada Group</p>

<p>Chuck Ebetino Email: cebetino@erpfuels.com</p> <p>Jason McCoy Email: jmccoy@erpfuels.com</p> <p>Bill Hunter Email: whunter1@optonline.net</p> <p>Robert Carswell Email: bobcarswellus@outlook.com Joe Bean (ERP Internal Counsel) Email: jowabean@gmail.com</p> <p>Conuma Coal Resources Limited P.O. Box 305 Madison, WV 25130</p> <p>Ken McCoy Email: kmccoy@erpfuels.com</p>	
<p>Dentons Canada LLP 15th Floor, Bankers Court 850 – 2nd Street SW Calgary, Alberta T2P 0R8</p> <p>David Mann Email: david.mann@dentons.com</p>	<p>Counsel for Conuma Coal Resources Limited (Purchaser) and Guarantors</p>
<p>ERP Compliant Fuels, LLC ERP Compliant Coke, LLC Seneca Coal Resources, LLC Seminole Coal Resources, LLC</p> <p>Tom Clarke Email: tom.clarke@kissito.org</p>	<p>Guarantors</p>
<p>Lamarche & Lang 505 Lambert Street Whitehorse, Yukon Y1A 1Z8</p> <p>Murray J. Leitch Email: mleitch@lamarchelang.com</p>	<p>Counsel for Pelly</p>

<p>Parkland Fuel Corporation #5101, 333 – 96th Avenue NE Calgary, Alberta T3K 0S3</p> <p>Christy Elliott Email: Christy.elliott@parkland.ca</p>	<p>Legal Counsel for Parkland</p>
<p>Peace River Coal Inc. c/o Anglo American Level 11, 201 Charlotte Street Brisbane Queensland 4000 Australia</p> <p>Carlos Davila Email: carlos.davila@angloamerican.com</p> <p>Federico G. Velásquez Email: Federico.velasquez@angloamerican.com</p>	<p>Purchaser of BelSax Assets</p>
<p>McCarthy Tétrault LLP Suite 2400, 745 Thurlow Street Vancouver BC V6E 0C5</p> <p>Sean Collins Email: scollins@MCCARTHY.CA</p> <p>Roger Taplin Email: rtaplin@mccarthy.ca</p>	<p>Counsel for Peace River Coal Inc.</p>
<p>Malaspina Consultants</p> <p>Marianna Pinter Email: Marianna@malaspinaconsultants.com</p>	
<p>Boale Wood</p> <p>John McEown Email: jmceown@boalewood.ca</p>	
<p>Fasken Martineau 550 Burrard Street, Suite 2900 Vancouver, BC V6C 0A3</p> <p>John Grieve Email: jgrieve@fasken.com</p>	<p>Legal Counsel for Boale Wood</p>

SCHEDULE "B"

See Attached

SCHEDULE "C"

See Attached

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

NOTICE OF APPLICATION

OSLER HOSKIN & HARCOURT LLP

Barristers & Solicitors
1055 West Hastings Street
Suite 1700, The Guinness Tower
Vancouver, BC V6E 2E9

Tel. No. 416.862.4924

Fax No. 416.862.6666

Client Matter No. 1164807

SCHEDULE "B"

See Attached

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

**ORDER MADE AFTER APPLICATION
(APPROVAL AND VESTING ORDER)**

BEFORE THE HONOURABLE)
MADAM JUSTICE FITZPATRICK) TUESDAY, THE 11TH DAY OF
JULY, 2017

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 11th day of July, 2017; AND ON HEARING Marc Wasserman and Patrick Riesterer, counsel for the Petitioners (collectively, the "**Walter Canada Group**"), Peter Reardon, counsel for KPMG Inc. in its capacity as the court-appointed monitor of the Walter Canada Group (the "**Monitor**") and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the Eleventh Affidavit of William E. Aziz sworn June 27, 2017 (the "**11th Affidavit**"), the Confidential Twelfth Affidavit of William E. Aziz sworn June 27, 2017 (the "**Confidential Affidavit**") and the Eleventh Report of the Monitor dated ●, 2017 (the "**11th Report**"); AND UPON BEING ADVISED that any secured creditors who are likely to be affected by this Order were given notice;

THIS COURT ORDERS AND DECLARES THAT:

DEFINITIONS

1. Capitalized terms used and not defined herein shall have the meaning ascribed thereto in the Initial Order in these proceedings dated December 7, 2015 (the "**Initial Order**") or the Sale Agreement (defined below), as applicable.

Draft

APPROVAL OF THE SALE AGREEMENT

2. The sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement dated May 31, 2017 (the "**Sale Agreement**") between New Walter Canadian Coal Corp. (the "**Seller**"), and Peace River Coal Inc. (the "**Purchaser**" and, collectively with the Seller, the "**Parties**"), a copy of which is attached as Exhibit "A" to the Confidential Affidavit, is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Seller is hereby authorized and approved, and the Seller is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the Assets described in the Sale Agreement (the "**Purchased Assets**"), including the execution of ancillary documents.
3. Upon delivery by the Monitor to the Purchaser of a certificate substantially in the form attached as **Schedule "B"** hereto (the "**Monitor's Certificate**"), all of the Seller's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) the Administration Charge, the Directors' Charge, the KERP Charge, the Success Fee Charge, and the Intercompany Charge (each as defined in the Initial Order or the Order of this Court dated January 5, 2016, as applicable); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the Permitted Encumbrances (as defined in the Sale Agreement) or the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"** hereto, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
4. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Monitor's Certificate, all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

Draft

5. The Monitor is to file with the Court a copy of the Monitor's Certificate forthwith after the respective delivery thereof.
6. Pursuant to Section 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, the Seller is hereby authorized and permitted (but not directed) to disclose and transfer to the Purchaser all human resources and payroll information in the Seller's records pertaining to the BelSax Assets (if any), including personal information. The Purchaser shall maintain and protect the privacy of any such information and shall be entitled to use any personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Seller.
7. Subject to the terms of the Sale Agreement, possession of the Purchased Assets shall be delivered by the Seller to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the Permitted Encumbrances as set out in the Sale Agreement and listed on **Schedule "D"**.
8. The Seller, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.
9. Notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of any member of the Walter Canada Group now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of any member of the Walter Canada Group,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any member of the Walter Canada Group and shall not be void or voidable by creditors of the Walter Canada Group, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

Draft

GENERAL

10. Endorsement of this Order by counsel appearing, other than counsel for the Walter Canada Group, is hereby dispensed with.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunals, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Walter Canada Group 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 Walter Canada Group and the Monitor and their respective agents in carrying out the terms of this Order.

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:

Lawyers for the Petitioners

Osler, Hoskin & Harcourt LLP
(Marc Wasserman and Patrick Riesterer)

BY THE COURT

REGISTRAR

Draft

SCHEDULE "B"

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 AND ARRANGEMENT
OF WALTER ENERGY CANADA HOLDINGS, INC., AND THE OTHER PETITIONERS
LISTED ON SCHEDULE "A"

PETITIONERS

MONITOR'S CERTIFICATE

1. Pursuant to an Order of the Court dated ●, 2017 (the "**Approval and Vesting Order**"), the Court approved the Asset Purchase Agreement dated May 31, 2017 (the "**Sale Agreement**") between New Walter Canadian Coal Corp. (the "**Seller**") and Peace River Coal Inc. (the "**Purchaser**", and, collectively with the Seller, the "**Parties**"), and ordered that all of the Seller's right, title and interest in and to the Assets, vest in the Purchaser effective upon the delivery by KPMG Inc., in its capacity as the Court-appointed Monitor of the Walter Canada Group (the "**Monitor**") of this certificate to the Purchaser confirming: (i) payment by the Purchaser and receipt by the Monitor of the Purchase Price in relation to the purchase by the Purchaser of the Assets; (ii) that the conditions to be complied with at or prior to the Closing as set out in **[Article 5 and Article 7]**, respectively, of the Sale Agreement have been satisfied or waived by the Seller or the Purchaser, as applicable; and (iii) the purchase and sale of the Assets has been completed pursuant to the Sale Agreement.
2. Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Sale Agreement.

THE MONITOR HEREBY CERTIFIES as follows:

- (a) The Purchaser has paid and the Monitor has received the Purchase Price in relation to the purchase by the Purchaser of the Assets;

Draft

- (b) The conditions to be complied with at or prior to the Closing as set out in **[Article 5 and Article 7]**, respectively, of the Sale Agreement have been satisfied or waived by the Seller or the Purchaser, as applicable; and
- (c) The purchase and sale of the Assets has been completed pursuant to the Sale Agreement.

DATED at the City of Vancouver, in the Province of British Columbia, this _____ day of _____, **[2017.]**

KPMG INC., in its capacity as the Court-appointed Monitor of Walter Energy Canada Holdings, Inc., et al. and not in its personal or corporate capacity

By:

Name:
Title:

Draft

SCHEDULE "C"

ENCUMBRANCES TO BE DISCHARGED

None

Draft

Draft

SCHEDULE "D"

PERMITTED ENCUMBRANCES

None

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

ORDER MADE AFTER APPLICATION

OSLER HOSKIN & HARCOURT LLP
Barristers & Solicitors
1055 West Hastings Street
Suite 1700, The Guinness Tower
Vancouver, BC V6E 2E9

Tel. No. 416.862.5947
Fax No. 416.862.6666

Client Matter No. 1164807

Draft

SCHEDULE "C"

See Attached

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

SEALING ORDER

BEFORE THE HONOURABLE)
MADAM JUSTICE FITZPATRICK) TUESDAY, THE 11TH DAY OF
JULY, 2017

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 11th day of July, 2017; AND ON HEARING Marc Wasserman and Patrick Riesterer, counsel for the Petitioners (collectively, the "**Walter Canada Group**"), Peter Reardon, counsel for KPMG Inc. in its capacity as the court-appointed monitor of the Walter Canada Group (the "**Monitor**") and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed herein;

THIS COURT ORDERS THAT:

- 1. Access to Sealed Items permitted by: *[Select all applicable]*
 - Counsel of Record
 - Parties on Record
 - Further Court Order
 - Others: _____

Draft

Items to be sealed

Document Name	Date Filed (Date on Court Stamp)	Number of copies filed, including any extra copies for the judge	Duration of sealing order	Sought	Granted	
					Yes	No
Confidential Affidavit #12 of William E. Aziz sworn June 27, 2017	●	two	Until further order	[X]	[X]	<input type="checkbox"/>

2. Endorsement of this Order by counsel appearing, other than counsel for the Walter Canada Group, is hereby 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:

Lawyers for the Petitioners

Osler, Hoskin & Harcourt LLP
(Marc Wasserman and Patrick Riesterer)

BY THE COURT

REGISTRAR

Draft

SCHEDULE "A"

COUNSEL LIST	
NAME	PARTY REPRESENTED

Draft

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

ORDER MADE AFTER APPLICATION

OSLER HOSKIN & HARCOURT LLP
Barristers & Solicitors
1055 West Hastings Street
Suite 1700, The Guinness Tower
Vancouver, BC V6E 2E9

Tel. No. 416.862.5947
Fax No. 416.862.6666

Client Matter No. 1164807

Draft

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

NOTICE OF APPLICATION

OSLER HOSKIN & HARCOURT LLP
Barristers & Solicitors
1055 West Hastings Street
Suite 1700, The Guinness Tower
Vancouver, BC V6E 2E9

Tel. No. 416.862.4924
Fax No. 416.862.6666

Client Matter No. 1164807