



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 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**

Name(s) of applicant(s): KPMG Inc., the Monitor

To: Service List attached hereto as Schedule "A"

TAKE NOTICE that an application will be made by the applicant to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on March 13, 2017 at 9:00 a.m. for the order set out in Part 1 below.

**Part 1: ORDER(S) SOUGHT**

1. That the Monitor be authorized and directed to receive funds held in trust by Victory Square Law Office LLP, counsel for United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-424 (the "USW") for the benefit of certain members of the USW in the amount of \$780,660.61, inclusive of interest to January 18, 2017, and interest, if any, accruing thereafter (the "Fund"), and to disburse the Fund to the members of the USW entitled to receive a *pro rata* share of the Fund.

**Part 2: FACTUAL BASIS**

1. On or about April 15, 2014, Wolverine Coal Partnership (the “Employer”) announced a temporary layoff of workers at the Wolverine Mine, including members of the USW. The Employer did not provide the Union with notice under section 54(1) of the *Labour Relations Code*, R.S.B.C. 1966, c. 244(b) (the “**Code**”).
2. The USW filed an application to the British Columbia Labour Relations Board (the “**Board**”) alleging that the Employer breached section 54 of the Code.
3. The Board, in its first decision, found that the Employer had breached section 54 of the Code. A reconsideration panel of the Board overturned that decision. The Board subsequently received supplementary submissions from the parties and issued a further decision finding that the Employer had breached section 54 of the Code, and ordered, among other things, that the Employer pay damages equivalent to 60 days’ pay for each affected employee, subject to mitigation.
4. On July 15, 2015, the USW applied to the Board for further relief. As a result of the Chapter 11 filing in the United States by Walter Energy Inc., the USW was concerned that there would be a filing in Canada that would interfere with its ability to quantify and collect the amounts owing to its members pursuant to section 54 of the Code.
5. On July 22, 2015, Jacquie de Aguayo, Vice-Chair of the Board, ordered that “The Employer shall forthwith pay to the Union, in trust, \$771,378.70, pending final disposition of this matter”.
6. The amount ordered, \$771,378.70, was paid to Victory Square Law Office LLP “in trust” by the Employer. The Fund was invested in an interest-bearing account, and interest accrued to January 18, 2017 in the amount of \$9,281.90, so that the total held in trust is \$780,660.61, together with further interest accruing.
7. On November 20, 2015, the Employer sought judicial review of the decisions of the Board by Petition in the Supreme Court of British Columbia, Vancouver Registry No. S-159678 (the “**Adjustment Plan Judicial Review**”).

8. In a separate proceeding, the USW sought judicial review of a decision of the Board in regards to a northern allowance for its members by Petition filed February 13, 2015 in the Supreme Court of British Columbia, Vancouver Registry No. S-151240 (the “**Northern Allowance Judicial Review**”).
9. Both the Adjustment Plan Judicial Review and the Northern Allowance Judicial Review (collectively, the “**Judicial Review Applications**”) were stayed by the Initial Order made herein on December 7, 2015.
10. Pursuant to the Claims Process Order made herein on August 16, 2016, the claims of the USW members, pursuant to section 54 of the Code, have been allowed by the Monitor in this proceeding in the total amount of \$2,573,695.78 (the “**Members’ Section 54 Claims**”). There are no Members’ Section 54 Claims that are unresolved.
11. On March 6, 2017, the appropriate Petitioner, New Wolverine Coal Corp., and the Monitor consented to lifting the stay of proceedings in connection with the Adjustment Plan Judicial Review and the Northern Allowance Judicial Review to allow for the consent dismissals or discontinuances of the Judicial Review Applications.
12. The Board has consented to the discontinuance of the Judicial Review Applications without costs.
13. The Judicial Review Applications have been discontinued.
14. The Monitor has agreed to assist the USW by distributing the Fund to the USW members whose Members’ Section 54 Claims have been allowed.
15. The amounts paid to the USW members by the Monitor will be deducted from their accepted claims against the New Walter estate.

### **Part 3: LEGAL BASIS**

1. The Fund constitutes a trust in favour of the USW for its members who were entitled to notice under section 54 of the Code and does not form part of the assets of New Wolverine Coal Corp.

2. Order Made After Application (Initial Order), made December 7, 2015.
3. Order Made After Application (Enhanced Power Order), made August 16, 2016.
4. Order Made After Application (New Walter Group Procedure Order), made December 7, 2016.

**Part 4: MATERIAL TO BE RELIED ON**

1. Monitor's Ninth Report, to be filed.
2. Affidavit #1 of Lori Viner, made March 9, 2017.

The applicant(s) estimate(s) that the application will take 15 minutes.

[Check the correct box.]

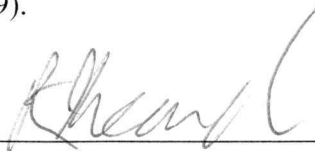
- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

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).

Date: March 9, 2017



Signature of

applicant     lawyer for applicant(s)

Peter J. Reardon

***To be completed by the court only:***

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application

with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: [dd/mmm/yyyy]

Signature of  Judge     Master

## Appendix

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

### **THIS APPLICATION INVOLVES THE FOLLOWING:**

*[Check the box(es) below for the application type(s) included in this application.]*

- discovery: comply with demand for documents
- discovery: production of additional documents
- other 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"**  
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**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*,  
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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 WOLVERINE COAL  
CORP. AND CAMBRIAN ENERGYBUILD HOLDINGS ULC

PETITIONERS

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**NOTICE OF APPLICATION**

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