



No. S1510120  
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 of applicant: KPMG Inc. (the "**Monitor**"), in its capacity as Monitor of the Petitioners

To: The Service List attached hereto as Schedule "A".

TAKE NOTICE that an application will be made by the applicant(s) to The Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on Tuesday, July 3, 2018 at 9:00 a.m. for the order(s) set out in Part 1 below.

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

1. An order, substantially in the form attached hereto as Schedule "B":
  - (a) approving the activities of the Monitor as set forth in the Monitor's Nineteenth Report to the Court dated June 27, 2018 (the "**Report**");
  - (b) approving the fees and disbursements of the Monitor for the period from the commencement of these proceedings to and including April 30, 2018 (the "**Fee**");

**Approval Period**”) in the amount of \$4,679,075.61 in respect of fees and \$179,155.18 in respect of disbursements, plus applicable taxes; and

(c) approving the fees and disbursements of the Monitor’s legal counsel, McMillan LLP (“**McMillan**”), for the Fee Approval Period in the amount of \$1,963,293.50 in respect of fees and \$31,004.46 in respect of disbursements, plus applicable taxes.

2. Such further and other relief as this Honourable Court may deem just.

## **Part 2: FACTUAL BASIS**

1. The Monitor was appointed pursuant to an Order of this Honourable Court made on December 7, 2015 (the “**Initial Order**”), on the application of the Petitioners under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).
2. Pursuant to the Initial Order, the Monitor was tasked with, among other things: (i) monitoring and approving the Walter Canada Group’s (as defined in the Initial Order) receipts and disbursements; (ii) reporting to the Court and stakeholders concerning the Walter Canada Group’s property and business; (iii) advising the Walter Canada Group in the preparation of their cash flow statements; and (iv) advising the Walter Canada Group with their restructuring efforts and the preparation of a plan of compromise and arrangement.
3. Pursuant to an Order of this Honourable Court made on August 16, 2016 (the “**August 2016 Order**”), the Monitor (in addition to its powers pursuant to the CCAA and the Initial Order) was authorized and empowered to undertake certain cash handling functions in respect of the Walter Canada Group, and to commence a claims process.
4. KPMG Inc. also acted as trustee in the proceedings pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, as amended (the “**BIA Proceedings**”) in respect of attempts to monetize remaining assets of the Walter Canada Group following the

purchase and sale of the principal assets of the Walter Canada Group to Conuma Coal Resources Ltd.

5. The activities of the Monitor for the Fee Approval Period in furtherance of its duties under the Initial Order, the August 2016 Order and subsequent Orders, and in furtherance of its duties in relation to the BIA Proceedings, are described in the Report.
6. The fees billed, and disbursements incurred, by the Monitor in the performance of its duties during the Fee Approval Period totalled \$4,858,230.79. The fees and disbursements of McMillan totalled \$1,994,297.96.
7. The Monitor is of the view that the work performed by the Monitor was necessary and appropriate in the circumstances, and that the fees and disbursements charged by McMillan in respect of services provided to the Monitor were reasonable in the circumstances.
8. The fees and disbursements of the Monitor and its legal fees have been reviewed and approved throughout the Fee Approval Period by William E. Aziz in his capacity as Court-appointed Chief Restructuring Officer to the Petitioners. In the view of Mr. Aziz, all accounts were fair and reasonable.

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

1. The Monitor relies on:
  - (a) the CCAA;
  - (b) the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, as amended, including section 39;
  - (c) Rules 8-1 of the *Supreme Court Civil Rules*; and
  - (d) the inherent jurisdiction of this Honourable Court.
2. The work performed by the Monitor and its legal counsel was done pursuant to, and in accordance with, the terms of the Initial Order and the August 2016 Order.

3. The Initial Order provides at paragraph 44 that the Monitor and its legal counsel shall pass their accounts from time to time, and that the approval of such accounts may be dealt with on a summary basis. The accounts of the Monitor and McMillan are attached to the Report as Schedules D and E.

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

1. Nineteenth Report of the Monitor dated June 27, 2018;
2. 23<sup>rd</sup> Affidavit of William E. Aziz made June 26, 2018; and
3. Such further and other material as counsel may advise and this Honourable Court may permit.

The Monitor estimates that the application will take 10 minutes.

This matter is not within the jurisdiction of a master.

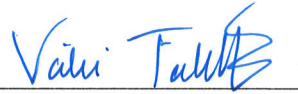
TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (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: June 27, 2018



\_\_\_\_\_  
Signature of Vicki Tickle  
Lawyer for the Monitor

***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"**

**SERVICE LIST**

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<p><b>McMillan LLP</b> Royal Centre, 1055 West Georgia Street Suite 1500, PO Box 11117</p> <p>Wael Rostom Email: <a href="mailto:wael.rostom@mcmillan.ca">wael.rostom@mcmillan.ca</a> Tel. 416-865-7790</p> <p>Peter Reardon Email: <a href="mailto:peter.reardon@mcmillan.ca">peter.reardon@mcmillan.ca</a></p> <p>Vicki Tickle Email: <a href="mailto:vicki.tickle@mcmillan.ca">vicki.tickle@mcmillan.ca</a></p> <p>Copy to: Lori Viner Email: <a href="mailto:lori.viner@mcmillan.ca">lori.viner@mcmillan.ca</a></p>	<p>Counsel to KPMG Inc.</p>
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**SCHEDULE "B"**

No. S1510120  
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

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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

**ORDER MADE AFTER APPLICATION**

BEFORE )  
          ) THE HONOURABLE MADAM )  
          ) JUSTICE FITZPATRICK ) July 3, 2018  
          )

ON THE APPLICATION of KPMG Inc., in its capacity as Monitor of the Petitioners (the "**Monitor**"), dated June 27, 2018, coming on for hearing at Vancouver, British Columbia on Tuesday, July 3, 2018; AND ON HEARING Peter Reardon and Vicki Tickle, counsel for the Monitor, and ♦, counsel for the Petitioners, and those other counsel listed in Schedule "A" hereto; AND UPON READING the material filed, including the Nineteenth Report of the Monitor dated June 27, 2018;

THIS COURT ORDERS that:

1. The time for service of the Notice of Application is hereby abridged and properly returnable today.

2. The activities of the Monitor as described in the First Report of the Monitor dated December 31, 2015, the Second Report of the Monitor dated March 24, 2016, the Third Report of the Monitor dated June 22, 2016, the Fourth Report of the Monitor dated August 11, 2016, the Fifth Report of the Monitor dated October 20, 2016, the Sixth Report of the Monitor dated December 5, 2016, the Seventh Report of the Monitor dated December 11, 2016, the Eighth Report of the Monitor dated January 12, 2017, the Ninth Report of the Monitor dated March 10, 2017, the Tenth Report of the Monitor dated May 24, 2017, the Eleventh Report of the Monitor dated July 4, 2017, the Twelfth Report of the Monitor dated August 11, 2017, the Thirteenth Report of the Monitor dated October 4, 2017, the Fourteenth Report of the Monitor dated December 7, 2017, the Sixteenth Report of the Monitor dated February 23, 2018, the Seventeenth Report of the Monitor dated April 5, 2018, the Eighteenth Report of the Monitor dated May 29, 2018, and the Nineteenth Report of the Monitor dated June 27, 2018, are hereby approved.
3. The Monitor's fees in the amount of \$4,679,075.61 and disbursements in the amount of \$179,155.18, plus applicable taxes, for the period from the commencement of these proceedings to and including April 30, 2018 (the "**Fee Approval Period**") are hereby approved.
4. The fees of the Monitor's legal counsel, McMillan LLP ("**McMillan**"), in the amount of \$1,963,293.50 and the disbursements of McMillan in the amount of \$31,004.46, plus applicable taxes, for the Fee Approval Period are hereby approved.

5. Endorsement of this Order by counsel appearing on this application, other than counsel for the Monitor, 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:

---

Signature of Vicki Tickle  
Lawyer for KPMG Inc. in its capacity as Monitor of the Petitioners

By the Court.

---

Registrar

**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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**ORDER MADE AFTER APPLICATION**

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Matter No. 236073



**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 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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