



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

Name 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 651 Carnarvon Street, New Westminster, BC V3M 1C9 on October 6, 2017 at 9:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order substantially in the form attached hereto as **Schedule "B"**, *inter alia*:
 - (a) Abridging the time for service of the notice of application
 - (b) Approving the Settlement Term Sheet Re Plan of Compromise or Arrangement (the "**Term Sheet**"), substantially in the form attached to the 15th Aziz Affidavit as Exhibit "A", among the members of the New Walter Canada Group, Warrior Met Coal, LLC ("**Warrior**") and the United Mine Workers of America 1974 Pension Plan and Trust (the "**1974 Plan**"), authorizing and directing the New Walter Canada Group to comply with their obligations under the Term Sheet, directing Warrior and the 1974 Plan to comply with their obligations under the Term Sheet, and directing the Monitor to comply with the Settlement Term Sheet and to take all reasonable steps to assist parties to the Settlement Term Sheet to (i) implement the terms of the Settlement Term Sheet and (ii) comply with their obligations thereunder;

- (c) Authorizing Cambrian Energybuild Holdings ULC to make further loan or loans to Energybuild Group Limited or Energybuild Ltd., on a secured basis, not to exceed an aggregate amount of £900,000.00, including the £600,000.00 loaned pursuant to the Orders of this Honourable Court pronounced December 21, 2016 and May 30, 2017;
- (d) Extending the stay until December 15, 2017; and
- (e) Such other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

1. Reference is made to the facts set out in Affidavit of William E. Aziz sworn October 3, 2017 (the "15th Aziz Affidavit").
2. Any capitalized term used but not otherwise defined below shall have the meaning given to it in the 15th Aziz Affidavit.
3. On December 7, 2015, this Honourable Court granted an Initial Order in favour of the Walter Canada Group pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.
4. The terms of the Initial Order, including the stay of proceedings, were subsequently extended as follows:
 - (a) to April 5, 2016 pursuant to an Order of this Honourable Court pronounced January 5, 2016;
 - (b) to June 24, 2016 pursuant to an Order of this Honourable Court pronounced March 30, 2016;
 - (c) to August 19, 2016 pursuant to an Order of this Honourable Court pronounced June 24, 2016;
 - (d) to January 17, 2017 pursuant to an Order of this Honourable Court pronounced August 16, 2016;
 - (e) to May 31, 2017 pursuant to an Order of this Honourable Court pronounced January 16, 2017; and
 - (f) to October 6, 2017 pursuant to an Order of this Honourable Court pronounced May 30, 2017.

Stay Extension

5. The New Walter Canada Group is requesting an extension of the Stay Period until and including December 15, 2017.
6. Based on the current cash flow projections, it is expected that the New Walter Canada Group will have sufficient operating cash to continue operations during the proposed extended Stay Period.
7. The New Walter Canada Group has been proceeding in good faith and with due diligence in these proceedings.
8. The Monitor supports the extension of the Stay Period and will file a report attaching cash flow forecasts that demonstrate, subject to the assumptions more fully set out in the report, that the New Walter Canada Group has sufficient liquidity to continue its operations as currently conducted through to the end of the proposed extended Stay Period.

9. It is in the best interests of the New Walter Canada Group and all its stakeholders that the Stay Period be extended to December 15, 2017, to enable the New Walter Canada Group to complete the Unresolved Restructuring Claims Process, address the claim of Kevin James for certain royalty payments and any remaining claims not yet fully addressed under the Claims Process, sell Energybuild Ltd. (if possible), and to develop and bring before the court for approval a plan of compromise and arrangement that addresses the distribution of the proceeds and the settlement of the 1974 Plan Claim

Approval of Term Sheet

10. The Term Sheet is the result of arm's length negotiations between the New Walter Canada Group, the 1974 Plan and Warrior, and is a full and final settlement of all outstanding issues among those parties in these CCAA proceedings.
11. As described in greater detail in the 15th Aziz Affidavit, the Term Sheet provides for, among other things, (i) a settlement of the claims advanced by Warrior in these CCAA proceedings; (ii) a settlement of the claim advanced by the 1974 Plan in these CCAA proceedings, and related litigation and costs; (iii) a potential plan of compromise and arrangement that New Walter Canada Group will bring forward for this Honourable Court's approval provided that certain pre-conditions are satisfied; and (iv) releases in respect claims asserted by Warrior and the 1974 Plan against the Walter UK Group to permit a sale of the Walter UK Group or any of its assets.
12. The Term Sheet and the Settlement contemplated therein is fair and reasonable, and in the best interests of the New Walter Canada Group and all its stakeholders, including due to the recoveries contemplated therein.
13. The Monitor supports the Settlement and the distribution contemplated in the Term Sheet, and supports the New Walter Canada Group's motion seeking Court approval for the Term Sheet.

Loan to Energybuild Group Limited or Energybuild Ltd.

14. Energybuild Ltd. requires certain working capital for a period of time to permit Energybuild Ltd. and the New Walter Canada Group to seek a resolution that is in the best interests of the New Walter Canada Group, the Walter UK Group and their respective stakeholders.

Part 3: LEGAL BASIS

15. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, in particular sections 11 and 11.02 thereof.
16. *Supreme Court Civil Rules*, including Rules 8-1 and 13-1.
17. The inherent and equitable jurisdiction of this Honourable Court and such further and other legal bases and authorities as counsel may advise and this Honourable Court may permit.

Approval of the Settlement Term Sheet

18. Section 11 of the CCAA provides:

Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

19. This Honourable Court has found that the approval of settlement agreements is within the Court's jurisdiction pursuant to section 11 of the CCAA, even before the presentation of a plan of arrangement.

Great Basin Gold Ltd., Re, 2012 BCSC 1173, at para. 16

20. In assessing a settlement within a CCAA proceeding, the courts have looked to three factors:
- (a) Whether the settlement is fair and reasonable
 - (b) Whether it provides substantial benefit to the other stakeholders; and
 - (c) Whether it is consistent with the spirit of the CCAA

The Cash Store Financial Services Inc. (Re), 2015 ONSC 7538, at para. 14

Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation, 2013 ONSC 1078, at para. 49

21. All of these factors are present in this case.
22. The Settlement is fair and reasonable. The terms of the Settlement provide for the preparation of a plan of compromise and arrangement to effect the payment in full of all Allowed Claims, subject to the results of the Unresolved Restructuring Claims Process and the other terms of the Settlement Term Sheet.
23. Only one claimant, Warrior, will face a compromise of its claim pursuant to the Settlement, and Warrior has agreed to the terms of the Settlement Term Sheet.
24. Certain disputed claims are to be determined on their merits.
25. The Settlement results in a substantial benefit to the other stakeholders of New Walter Canada Group. One substantial benefit is due to the abandonment (subject to the terms of the Settlement Term Sheet) of the 1974 Plan's appeal of the May 1 Order of this Honourable Court disallowing the 1974 Plan Claim.
26. Should the appeal go forward and New Walter ultimately be successful on the appeal (and any subsequent appeal), there would nevertheless be significant delay in distributing value to New Walter Canada Group's stakeholders. Should New Walter Canada Group be unsuccessful on the appeal (and any subsequent appeal), the stakeholders would also face significant delay in receiving any distribution from New Walter Canada Group and may receive a significantly reduced recovery if the 1974 Plan were ultimately successful in proving its claim.
27. The Term Sheet also settles claims against the Walter UK Group, which will assist in furthering the sale of one or more entities that compose the Walter UK Group, which will reduce New Walter Canada Group's funding commitments and benefit both New Walter Canada Group's and Walter UK Group's stakeholders.
28. The Settlement is consistent with the spirit of the CCAA. The Settlement will further New Walter Canada Group's efforts to maximize value for all its stakeholders and prepare a plan of compromise or arrangement to permit a distribution in the near term.
29. The implementation of the principal terms of the Settlement Term Sheet will be pursuant to the terms of a plan of compromise and arrangement, which will be subject to approval by this Honourable Court.

30. The Settlement and the execution of the Settlement Term Sheet is supported by the Monitor.

Extension of the Stay Period

31. Section 11.02 of the CCAA provides:

11.02

...

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

CCAA, s. 11.02

32. The current stay of proceedings expires on October 6, 2017.

33. The Walter Canada Group needs further time to complete the Claims Process, the Unresolved Restructuring Claims Process and to prepare and file a plan of compromise and arrangement to effect the terms of the Settlement.

34. The Walter Canada Group has been and continues to act in good faith and with due diligence in these proceedings.

35. Accordingly, an extension of the stay of proceedings to December 15, 2017 is appropriate.

Part 4: MATERIAL TO BE RELIED ON

1. The 15th Aziz Affidavit;

2. Monitor's 13th Report, to be filed;

3. Pleadings and other materials filed herein; and

4. Such further and other materials as counsel may advise and this Honourable Court may permit.

The applicant(s) estimate(s) 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 of 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).

Dated: Oct. 3, 2017



Lawyers for the Petitioners
Osler, Hoskin & Harcourt LLP
(Marc Wasserman, Patrick Riesterer & Mary Paterson)

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: _____

Signature of

Judge Master

SCHEDULE "A"

(see attached)

SERVICE LIST

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SCHEDULE "B"

(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*,
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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

**ORDER MADE AFTER APPLICATION
(Order: Term Sheet & Stay Extension)**

BEFORE THE HONOURABLE
MADAM JUSTICE FITZPATRICK

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)
)

FRIDAY, THE 6TH DAY OF
OCTOBER, 2017

ON THE APPLICATION of the Petitioners coming on for hearing at New Westminster, British Columbia, on the 6th day of October, 2017; AND ON HEARING Patrick Riesterer, counsel for the Petitioners, Vicki Tickle, counsel for KPMG Inc. and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the 15th Affidavit of William E. Aziz sworn October 3, 2017 (the "**15th Aziz Affidavit**"), the Thirteenth Report of KPMG Inc. in its capacity as Monitor dated ●, 2017;

THIS COURT ORDERS AND DECLARES THAT:

SERVICE AND DEFINITIONS

1. The time for service of the notice of application for this order is hereby abridged and deemed good and sufficient and this application is properly returnable today.
2. All capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Initial Order in these proceedings dated December 7, 2015 (the "**Initial Order**").

STAY EXTENSION

3. The Stay Period, as defined in paragraph 18 of the Initial Order, is hereby further extended up to and including December 15, 2017.

APPROVAL OF SETTLEMENT TERM SHEET

4. The Settlement Term Sheet, substantially in the form attached as Exhibit "A" to the 15th Aziz Affidavit (with such minor amendments as the parties may, in consultation with the Monitor agree), is hereby approved and the Settlement (as defined therein) is fair and reasonable.
5. The Petitioners are hereby authorized and directed, and the other parties to the Settlement Term Sheet are hereby directed, to comply with their obligations thereunder.
6. The Monitor is hereby directed to comply with the Settlement Term Sheet and to take all reasonable steps to assist parties to the Settlement Term Sheet to (i) implement the terms of the Settlement Term Sheet and (ii) comply with their obligations thereunder.
7. Notwithstanding any provision of this Order, the Monitor shall incur no liability as a result of the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded to the Monitor by the CCAA or any applicable legislation

LOAN TO ENERGYBUILD ENTITIES

8. Cambrian Energybuild Holdings ULC is hereby authorized, but not directed, to make such further loan or loans to Energybuild Group Limited or Energybuild Ltd., on a secured basis, to provide working capital to Energybuild Ltd. not to exceed an aggregate amount of £900,000.00 including the amounts advanced pursuant to the order of this Court pronounced December 21, 2016 and the order of this Court dated May 30, 2017, and approving, *nunc pro tunc*, any steps taken in respect of such advances prior to the date of this Order.

GENERAL

9. Endorsement of this Order by counsel appearing, other than counsel for the Petitioners, 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 Petitioners 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 Petitioners 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
(Patrick Riesterer)

BY THE COURT

REGISTRAR

NO. S-1510120
VANCOUVER REGISTRY

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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
(Stay Extension Order)**

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Tel. No. 416.862.4924
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Client Matter No. 1164807

NO. S-1510120
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS
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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
(Order: Settlement Term Sheet & Stay Extension)

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