

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 800 Smithe Street, Vancouver, BC, V6Z 2E1 on February 27th, 2018 at 9:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order (the "**Approval Order**") authorizing but not requiring the execution of a share sale agreement (the "**SSA**") by and among Energybuild Holdings Limited ("**Energybuild Holdings**" or the "**Vendor**") and Speciality Carbons Limited ("**Specialty Carbons**"), substantially in the form attached hereto as **Schedule "B"**, and the consummation of the transaction (the "**Transaction**") contemplated by the SSA.
2. An Order substantially in the form attached hereto as **Schedule "C"** that the confidential affidavit of William E. Aziz sworn February 24, 2018 (to be filed) and the exhibits thereto (the "**Confidential Aziz Affidavit**") be sealed, kept confidential and not form part of the public record.

Part 2: FACTUAL BASIS

1. Reference is made to the facts set out in the Affidavit of William E. Aziz sworn February 24, 2018 (the "**Nineteenth Aziz Affidavit**").

2. Any capitalized term used but not defined below shall have the meaning given to it in the Nineteenth Aziz Affidavit.

The Proposed Transaction

Background: Marketing Efforts for Walter U.K. Assets and the Offer Letter

3. The proposed Transaction involves Energybuild Holdings selling the entire issued share capital (the “**Shares**”) of Energybuild Limited, Energybuild Mining Limited, and Mineral Extraction and Handling Limited (together, the “**Energybuild Companies**”) to Speciality Carbons.
4. The Energybuild Companies are all U.K. companies indirectly owned by New Walter Canada Holdings, Inc.
5. The assets of the New Walter Canada Group’s U.K. subsidiaries (the “**Walter U.K. Assets**”) have been extensively marketed before and during these CCAA proceedings:
 - (a) *Before the CCAA proceedings:* PJT Partners LP (the Old Walter Canada Group’s financial advisor) canvassed the market in an attempt to find a purchaser for the assets of the Old Walter Canada Group, including in relation to the Chapter 11 proceedings in respect of certain members of the Walter U.S. Group.
 - (b) *During the CCAA proceedings:* The Walter U.K. Assets were marketed under the SISP Order leading to the asset purchase agreement with Conuma Resources Limited (the “**Conuma Transaction**”) and eventually to the purchase agreement with Peace River Coal Inc. (the “**Belcourt Transaction**”), and during the sales process (the “**Remaining Assets Sales Process**”) adopted to market the remaining assets of the Old Walter Canada Group (the “**Remaining Assets**”).
6. Speciality Carbons expressed an interest in acquiring the Walter U.K. Assets on June 10, 2016, before the bid deadline established under the SISP Order (as extended in accordance with its terms).
7. On December 5, 2017, the New Walter Canada Group received a draft offer letter (the “**Offer Letter**”) from Speciality Carbons setting out Speciality Carbons’ preferred proposal for acquiring the Shares.
8. The Offer Letter included a binding exclusivity clause giving Speciality Carbons the exclusive right to negotiate and enter into the transaction contemplated in the Offer Letter and providing that Energybuild Holdings will not solicit any other offers for a certain period of time (the “**Exclusivity Period**”).
9. On December 13, 2017, this Honourable Court made the Stay Extension & Energybuild Order, following which Energybuild Holdings entered into the Offer Letter with Speciality Carbons.¹
10. Subsequently, the New Walter Canada Group and Speciality Carbons began negotiating the SSA contemplated in the Offer Letter.
11. During these negotiations, Speciality Carbons significantly improved upon its offer by increasing the purchase price and by removing the requirement for certain working capital advances.
12. These improvements will permit the New Walter Canada Group to fully recover all the amounts loaned to Energybuild to date and to wind up the Energybuild entities that are not sold much

¹ As discussed in greater detail in my eighteenth affidavit sworn in these proceedings on February 21, 2018 (the “**Eighteenth Aziz Affidavit**”), the Stay Extension & Energybuild Order contained a typo and mistakenly referred to “Energybuild Ltd.” instead of “Energybuild Holdings Limited.”

earlier than would have been possible under the original transaction structure set out in the Offer Letter.

Unsolicited Alternative Offer for the Shares

13. The New Walter Canada Group received an unsolicited, non-binding offer for the Shares from Stephen Cork, in his capacity as the Joint Administrator of Glyncastle plc (the "**Glyncastle Administrator**").
14. As the Glyncastle Administrator's offer was received during the Exclusivity Period, the New Walter Canada Group was not able to engage with this potential purchaser.
15. In any event, even though the Glyncastle Administrator indicated that it may be prepared to offer a higher purchase price, the New Walter Canada Group concluded that it is in the best interests of all stakeholders to proceed with the SSA now:
 - (a) The Glyncastle Administrator has not conducted any due diligence on the Energybuild Companies or their assets, and additional time will be needed to allow it to conduct due diligence and to negotiate definitive documents regarding a sale.
 - (b) The due diligence and negotiation process may result in a reduction to the indicative purchase price proposed in the Glyncastle Administrator's non-binding offer.
 - (c) Additional costs would be incurred by the Energybuild Companies during the diligence and negotiation period, and the New Walter Canada Group would have to provide further funding to the Energybuild Companies while negotiations were ongoing.
 - (d) If a transaction with the Glyncastle Administrator could not be concluded, there is no guarantee that Speciality Carbons would still be prepared to enter into an SSA.
16. In the exercise of its reasonable business judgment, the New Walter Canada Group concluded that it was in its best interest and the best interest of all stakeholders to consummate the nearly-finalized transaction with Speciality Carbons and not to pursue the uncertain possibility of a transaction with the Glyncastle Administrator.

The SSA

17. The New Walter Canada Group and Speciality Carbons have negotiated and agreed to the SSA which sets out the terms pursuant to which Energybuild Holdings proposes to sell the Shares to Speciality Carbons.
18. The SSA and the Transaction are described in more detail in the Nineteenth Aziz Affidavit.
19. While Energybuild Holdings is not insolvent and is not subject to the CCAA Proceedings, it is indirectly owned by Cambrian, a CCAA debtor, and, therefore, the factors set out in the CCAA may be instructive as part of the request for this Court's approval of the SSA and the Transaction.
20. The factors listed in section 36 of the CCAA, among others, support the approval of the Transaction as follows:
 - (a) The sales process leading to the proposed Transaction was reasonable in the circumstances. The Walter U.K. Assets have been marketed three times:
 - (i) prior to the commencement of the CCAA proceedings as part of the broad canvassing of the market by WEI and the Old Walter Canada Group's financial advisor;

- (ii) as part of the marketing process for all of the assets of the Old Walter Canada Group conducted pursuant to the SISP Order and leading to the Conuma Transaction; and
- (iii) as part of the Remaining Assets Sales Process.

This Court has previously granted approval and vesting orders for the Conuma Transaction, the Belcourt Transaction, and the Remaining Assets Transaction which resulted from these marketing efforts.

- (b) The Monitor approves of the process leading to the proposed Transaction and supports the Transaction.
- (c) The proposed Transaction will improve creditors' recoveries because it will result in the repayment of the Cambrian Advances and will eliminate any need to provide further funding for the Energybuild Companies, and affected creditors have been consulted regarding the Transaction.
- (d) The consideration to be received in respect of the Shares subject to the Transaction is reasonable and fair, taking into account their market value.
- (e) The New Walter Canada Group has proceeded in good faith and with due diligence throughout the process leading to the SSA, and has received advice from legal and financial advisors and from the Monitor and the CRO.
- (f) Speciality Carbons is not related to any member of the New Walter Canada Group.

Confidential Aziz Affidavit

- 21. An unredacted copy of the SSA and of the Glyncastle Administrator's offer are attached as exhibits to the Confidential Aziz Affidavit.
- 22. The unredacted copy of the SSA that is attached to Confidential Aziz Affidavit contains confidential business information.
- 23. The purchase price and certain other terms of the SSA are commercially sensitive, and this information would not normally be publicly available and should not be disclosed at any point before the Transaction successfully closes.
- 24. It is not necessary to disclose the exact price because other terms of the SSA have been disclosed and the Monitor will provide its views on the Transaction.
- 25. The unredacted copy of the Glyncastle Administrator's offer contains the Glyncastle Administrator's proposed purchase price, which has been redacted to keep the purchase price in the SSA confidential.
- 26. The Confidential Aziz Affidavit should therefore be sealed until further order of this Honourable Court.

Part 3: LEGAL BASIS

The Approval Order should be Granted

- 27. The SSA is the result of extensive marketing efforts undertaken before and during these CCAA proceedings, provides a certain and a fair return for the Shares, and is supported by the Monitor.

28. The Glyncastle Administrator's non-binding offer does not call into question the efficacy or sufficiency of the efforts to market the Walter U.K. Assets, and the Court should not interfere with the New Walter Canada Group's reasonable judgment to favour the nearly-finalized SSA over the uncertain possibility of a deal with the Glyncastle Administrator.
29. Rejecting the SSA because of the late offer from the Glyncastle Administrator would undermine the integrity of the sales process undertaken in this case.
30. Therefore, this Court should grant the Approval Order.

This Court has the jurisdiction to grant the Approval Order

31. 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.

32. While s. 36 is not strictly applicable in this case as Energybuild Holdings is not a debtor company, the Shares are indirectly owned by the New Walter Canada Group (who are all debtor companies and petitioners in these CCAA proceedings) and it is appropriate for the Court to approve the sale in this instance, particularly given the sums advanced by the Petitioners to the Energybuild Companies.
33. In addition, CCAA courts have the jurisdiction to authorize a debtor company to enter into agreements or transactions during a stay period and prior to any plan of arrangement being proposed to creditors.

Re Nortel Networks Corp, 2010 ONSC 1708 at paras 67-71

Re Great Basin Gold Ltd, 2012 BCSC 1773 at para 16

Re Walter Energy Canada Inc, 2017 BCSC 1968 at para 32

34. This Court exercised this jurisdiction when it authorized the New Walter Canada Group to direct Energybuild Holdings to enter into the Offer Letter.
35. Therefore, this Court has the jurisdiction to grant the Approval Order authorizing the execution of the SSA and consummate the Transaction.

The Approval Order should be Granted

36. Subsection 36(3) sets out the factors that CCAA courts 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).

37. These factors were considered and applied by this Honourable Court when approving the Conuma Transaction.

Re Walter Energy Canada Holdings, Inc, 2016 BCSC 1746
 (“**Re Walter – Conuma Transaction**”), at paras 16-23

38. Once again, while the factors enumerated in s. 36 are not strictly applicable, they reflect the factors considered by courts more broadly when approving a sale in insolvency proceedings and, therefore, provide a useful guidepost in this case.

Roderick J Wood, *Bankruptcy and Insolvency Law*, 2nd ed
(Toronto: Irwin Law Inc, 2015), at p 413

39. As noted above and reproduced below for convenience, the factors listed in Section 36 of the CCAA, among others, support the approval of the Transaction:

- (a) The sales process leading to the proposed Transaction was reasonable in the circumstances. The Walter U.K. Assets have been marketed three times:
 - (i) prior to the commencement of the CCAA proceedings as part of the broad canvassing of the market by WEI and the Old Walter Canada Group's financial advisor;
 - (ii) as part of the marketing process for all of the assets of the Old Walter Canada Group conducted pursuant to the SISP Order and leading to the Conuma Transaction; and
 - (iii) as part of the Remaining Assets Sales Process.

This Court has previously granted approval and vesting orders for the Conuma Transaction, the Belcourt Transaction, and the Remaining Assets Transaction which resulted from these marketing efforts.

- (b) The Monitor approves of the process leading to the proposed Transaction and supports the Transaction.
 - (c) The proposed Transaction will improve creditors' recoveries because it will result in the repayment of the Cambrian Advances and will eliminate any need to provide further funding for the Energybuild Companies, and affected creditors have been consulted regarding the Transaction.
 - (d) The consideration to be received in respect of the Shares subject to the Transaction is reasonable and fair, taking into account their market value.
 - (e) The New Walter Canada Group has proceeded in good faith and with due diligence throughout the process leading to the SSA, and has received advice from legal and financial advisors and from the Monitor and the CRO.
 - (f) Speciality Carbons is not related to any member of the New Walter Canada Group.
40. 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.

Re Comstock Canada Ltd, 2014 ONSC 493 at para 20

Re North American Tungsten Corp, 2016 BCSC 12 at para 30(a)

41. This Court should grant the requested order despite the Glyncastle Administrator's non-binding offer.

42. As noted above and as repeated below for convenience, the New Walter Canada Group, in the exercise of its reasonable business judgment, has concluded that it is in its best interest and the best interest of all stakeholders to proceed with the SSA now for the following reasons:

- (a) The Glyncastle Administrator has not conducted any due diligence on the Energybuild Companies or their assets, and additional time will be needed to allow it to conduct due diligence and to negotiate definitive documents regarding a sale.

- (b) The due diligence and negotiation process may result in a reduction to the indicative purchase price proposed in the Glyncastle Administrator's non-binding offer.
 - (c) Additional costs would be incurred by the Energybuild Companies during the diligence and negotiation period, and the New Walter Canada Group would have to provide further funding to the Energybuild Companies while negotiations were ongoing.
 - (d) If a transaction with the Glyncastle Administrator could not be concluded, there is no guarantee that Speciality Carbons would still be prepared to enter into an SSA.
43. In *Terrace Bay*, the Ontario Superior Court of Justice approved a sale to a purchaser despite a late, initially non-binding offer from another bidder that was approximately 30 percent higher.

Re Terrace Bay Pulp Inc, 2012 ONSC 4247

The Confidential Aziz Affidavit Should be Sealed

44. The following two-part test applies when determining whether a confidentiality order should be granted:
- (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 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 at para 53

Sahlin v Nature Trust of British Columbia, Inc, 2010 BCCA 516 at para 6

45. This Court has accepted and applied the *Sierra Club* test on multiple occasions in these CCAA proceedings.

Re Walter – Conuma Transaction, at para 9

Re Walter Energy Canada Inc, 2016 BCSC 107 at para 51

46. The unredacted copy of the SSA and the Glyncastle Administrator's offer attached to the Confidential Affidavit contain confidential business information.
47. The Sealing Order requested is necessary to preserve this commercial interest.
48. The prejudice of disclosing the confidential terms of the Offer Letter outweighs the potential harm, if any, if the Confidential Aziz Affidavit were to be sealed.

Other Grounds

49. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.
50. *Supreme Court Civil Rules*, BC Reg 168/2009, including Rules 8-1 and 13-1.
51. 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.

Part 4: MATERIAL TO BE RELIED ON

1. The Nineteenth Aziz Affidavit;
2. The Confidential Aziz Affidavit;
3. Supplement to Monitor's 16th 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 applicant(s) estimate(s) that the application will take 1 hour.


This matter is within the jurisdiction of a master.

X 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 services 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: February 25, 2018


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

<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. PO Box 10426 777 Dunsmuir Street Vancouver, BC V7Y 1K3 Canada</p> <p>Anthony Tillman Email: atillman@kpmg.ca</p> <p>Mark Kemp-Gee Email: mkempgee@kpmg.ca</p> <p>Mark Clark Email: maclark@kpmg.ca</p>	<p>Monitor</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>Vicki Tickle Email: vicki.tickle@mcmillan.ca</p> <p>Copy to: Lori Viner Email: lori.viner@mcmillan.ca</p>	<p>Counsel to KPMG Inc.</p>
<p>Walter Energy, Inc. 3000 Riverchase Galleria Birmingham, AL 35244</p>	<p>Parent company of the Petitioners</p>
<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>Counsel to Walter Energy, Inc.</p>
<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 Email: efeld@whitecase.com</p>	<p>US Counsel to Morgan Stanley Senior Funding, Inc., as Administrative Agent and Collateral Agent under the First Lien Credit Facility</p>
<p>Stikeman Elliott LLP 199 Bay Street, Suite 4900</p>	<p>Canadian Counsel to Morgan Stanley Senior Funding, Inc., as Administrative</p>

<p>Toronto, Ontario M5L 1B9</p> <p>Tel: 416-869-6820 Fax: 416-947-9477</p> <p>Kathryn Esaw Email: kesaw@stikeman.com</p> <p>Sanja Sopic Email: ssopic@stikeman.com</p>	<p>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>Craig Bavis Email: cbavis@vslo.ca Tel: 604-684-8421</p>	<p>Canadian Counsel to the United Steelworkers, Local 1-424</p>

<p>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>	<p>Counsel to Her Majesty the Queen in Right of the Province of British Columbia</p>

<p>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>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>BlueTree 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@millerthomson.com</p>	<p>Counsel to Mitsui Matsushima Co., Ltd.</p>
<p>Miller Thomson LLP 840 Howe Street, Suite 1000 Vancouver, BC V6Z 2M1</p> <p>Heather L. Jones Tel. 604-643-1231 (direct) Tel. 604-687-2242 (main) Email: hjones@millerthomson.com</p>	<p>Counsel to Mr. Kevin James</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</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</p> <p>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>	Counsel for Conuma Coal Resources Limited (Purchaser) and Guarantors
<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>	Guarantors
<p>Lamarche & Lang 505 Lambert Street Whitehorse, Yukon Y1A 1Z8</p> <p>Murray J. Leitch Email: mleitch@lamarchelang.com</p>	Counsel for Pelly

<p>Parkland Fuel Corporation #5101, 333 – 96th Avenue NE Calgary, Alberta T3K 0S3</p> <p>Christy Elliott Email: Christy.elliott@parkland.ca</p>	Legal Counsel for Parkland
<p>Anglo American Exploration (Canada) Ltd.</p> <p>Federico G. Velásquez Email: Federico.velasquez@angloamerican.com</p>	
<p>McCarthy Tétrault LLP Suite 4000, 421 7th Avenue SW Calgary AB T2P 4K9</p> <p>Sean Collins Email: scollins@mccathy.ca</p>	Legal Counsel for Anglo American Exploration (Canada) Ltd.
<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>	Legal Counsel for Boale Wood
<p>Capital Law Capital Building Tyndall Street Cardiff, Wales CF10 4AZ</p> <p>Marlies Hoecherl Email: M.Hoecherl@CapitalLaw.co.uk</p>	Counsel to Specialty Carbons Limited
<p>Norton Rose Fulbright Canada LLP 1800 - 510 W. Georgia Street Vancouver, BC V6B 0M3</p> <p>Kieran Siddal Email: kieran.siddal@nortonrosefulbright.com</p>	Canadian Counsel to Specialty Carbons Limited

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*,
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

**ORDER MADE AFTER APPLICATION
(Energybuild Sale Approval Order)**

BEFORE THE HONOURABLE
MADAM JUSTICE FITZPATRICK

)
)
)

TUESDAY, THE 27TH DAY OF
FEBRUARY, 2018

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 27th day of February, 2018; AND ON HEARING Marc Wasserman and Patrick Riesterer, counsel for the Petitioners, Peter Reardon, counsel for KPMG Inc. and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the 19th Affidavit of William E. Aziz sworn February ●, 2018, 20th Confidential Affidavit of William E. Aziz sworn February ●, 2018 (the "**Confidential Aziz Affidavit**") and the Supplement to the Monitor's Sixteenth Report of KPMG Inc. in its capacity as Monitor dated February ●, 2018;

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**") or in the

share sale agreement between Energybuild Holdings Limited (the "**Vendor**") and Speciality Carbons Limited (the "**Purchaser**"), as attached to the Confidential Aziz Affidavit (the "**SSA**").

ENERGYBUILD SHARE SALE AGREEMENT

3. The execution of the SSA, substantially in the form attached to the Confidential Aziz Affidavit, is hereby authorized but not directed. The sale of the entire issued and authorized capital of each of Energybuild Limited, Energybuild Mining Limited, and Mineral Extraction and Handling Limited (collectively, the "**Energybuild Companies**") is hereby approved, along the execution of such additional documents and the taking of any steps (whether before or after the date of this Order) as may be necessary or desirable to finalize the SSA and consummate the transaction set out therein (the "**Transaction**"). The Transaction and the SSA are commercially reasonable.
4. Closing of the Transaction shall be deemed to be effective as of the date and time set out in a Monitor's certificate substantially in the form attached as Schedule "**B**" hereto (the "**Monitor's Certificate**") and the Monitor is to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof.

DEPOSIT & PURCHASE PRICE

5. In connection with the Deposit and the Purchase Price (each as defined in the SSA) paid in connection with the Transaction:
 - (a) the Monitor shall hold the Deposit on behalf of the Vendor, pending Closing, in a separate trust or client account with the Canadian Imperial Bank of Commerce;
 - (b) If the Closing does not occur by the Closing Date (or such later date as may be agreed to by the Vendor in writing) by reason of any default by the Purchaser, the full amount of the Deposit plus any accrued interest shall become the property of the Vendor and shall be retained by the Monitor on behalf of the Vendor as liquidated damages, and not as a penalty, to compensate it for expenses or damages incurred in connection with the transactions contemplated in the SSA and the delay caused to the Vendor's efforts to sell the Shares or take other action in connection with the Energybuild Companies. The entitlement of the Monitor on behalf of the Vendor to retain the Deposit in such circumstances shall not limit the Vendor's right to exercise any other rights and remedies which the Vendor may have against the Purchaser in respect of such default;
 - (c) If the Closing does not occur for any reason other than the default of the Purchaser, the Monitor shall return to the Purchaser the full amount of the Deposit plus any accrued interest (with funds

payable to such account as the Purchaser shall indicate in writing to the Monitor) and the Purchaser shall have no further recourse against the Vendor or the Monitor; and

- (d) Immediately following the filing of the Monitor's Certificate, the Monitor shall transfer an amount equal to the amounts owing by Energybuild Group Limited, Vendor and the Energybuild Companies pursuant to the secured loans made by Cambrian Energybuild Holdings ULC that were authorized by previous Orders of this Court.

RELEASES

- 6. Upon the closing of the Transaction, the CRO, the Monitor, the Vendor, any of their affiliates and any partner, employee, officer, director, accountant, agent, financial, legal or other representative of the Vendor, the Monitor or the CRO, and the directors and officers of the Energybuild Companies, in each case, shall be released from any and all claims, demands, complaints, grievances, actions, suits, Orders, charges, indictments, prosecutions, or other similar processes, assessments or reassessments, including any claims arising out of equitable interests, options, preferential arrangements of any kind or nature, assignments, restrictions, financing statements, deposit arrangements, rights of others, leases, sub-leases, licences, rights of first refusal or similar restrictions, and any judgments, debts, liabilities, reasonable and properly incurred expenses, costs, damages or losses, contingent or otherwise, including loss of value, reasonable and properly incurred professional fees, including fees and disbursements of legal counsel, and all actual and documented costs incurred in investigating or pursuing any of the foregoing or arising out of any proceeding relating to any of the foregoing, known or unknown, that the Purchaser may have against such person relating to, arising out of, or in connection with the negotiation and execution of the SSA, the transactions contemplated hereunder and any proceedings commenced with respect to or in connection therewith.

GENERAL

- 7. 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:

Patrick Riesterer
Counsel for the Petitioners

BY THE COURT

REGISTRAR

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 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

MONITOR'S CERTIFICATE

1. Pursuant to an Order of the Court dated ●, 2018 (the "**Energybuild Sale Approval Order**"), the Court authorized the Petitioners to take any steps necessary to direct Energybuild Holdings Limited to enter into the Share Sale Agreement dated ●, 2018 (the "**Sale Agreement**") between Energybuild Holdings Limited (the "**Seller**") and Specialty Carbons Limited (the "**Purchaser**", and, collectively with the Seller, the "**Parties**"), and ordered the closing would be evidenced by the filing with the Court by KPMG Inc., in its capacity as the Court-appointed Monitor of the Petitioners (the "**Monitor**") of this certificate to the Parties confirming: (i) payment by the Purchaser and receipt by the Monitor of the Purchase Price required under the Sale Agreement; (ii) that the Monitor has been advised by each relevant Party that the conditions to be complied with at or prior to the Closing as set out in [**Article 7 and Article 8**], 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 Shares 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 (on behalf of the Seller) the Purchase Price contemplated in the SSA;
- (b) The conditions to be complied with at or prior to the Closing as set out in **[Article 7 and Article 8]**, 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 Shares has been completed pursuant to the Sale Agreement.

DATED at the City of Vancouver, in the Province of British Columbia, at _____ **[a.m./p.m]**
prevailing Vancouver time this _____ day of _____, 2018.

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

By:

Name:

Title:

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

**ORDER MADE AFTER APPLICATION
(Energybuild Sale Approval)**

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

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 27TH DAY OF
) FEBRUARY, 2018

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 27th day of February, 2018; 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: Counsel of Record
 Parties on Record
 Further Court Order
 Others: _____

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 #20 of William E. Aziz sworn February [27*], 2018	February [27*], 2018	two	Until further order	[X]	[X]	[]

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:

Patrick Riesterer
Counsel for the Petitioners

BY THE COURT

REGISTRAR

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

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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

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

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IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
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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

**NOTICE OF APPLICATION
(Energybuild Sale Approval Order)**

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