



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 800 Smithe Street, Vancouver, BC, V6Z 2E1 on Wednesday, November 7, 2018 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"**:
 - (a) extending the stay of proceedings in respect of the New Walter Canada Group to March 8, 2019.
 - (b) Authorizing the Petitioners to cause each of Energybuild Group Limited, Energybuild Holdings Limited and Energybuild Opencast Limited (collectively "**Walter UK**") to be wound up in such manner as the Petitioners determine, and to take any additional steps and execute, or cause any member of Walter UK to execute, any additional documents as may be necessary or desirable in their discretion, and the director of the Petitioners shall have no liability for any action taken in connection with the foregoing.

Part 2: FACTUAL BASIS

1. Reference is made to the facts set out in the Affidavit of William E. Aziz, sworn November 1, 2018 (the "**Twenty-fourth Aziz Affidavit**").
2. Any capitalized term used but not defined below shall have the meaning given to it in the Twenty-fourth Aziz Affidavit.
3. On December 7, 2015, this Honourable Court granted an initial order (as amended and restated from time to time, the "**Initial Order**") in favour of the Old Walter Canada Group pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**").
4. The terms of the Initial Order, including the stay of proceedings, were subsequently extended by further orders of the Court to December 1, 2018.
5. The New Walter Canada Group is requesting an extension of the Stay Period until and including March 8, 2019 to permit the New Walter Canada Group to continue to work toward satisfying the conditions precedent to the implementation of the New Walter Canada Group's Amended and Restated Plan of Compromise and Arrangement dated June 22, 2018 (the "**Amended Plan**").
6. The principal remaining condition precedent that must be satisfied before any distributions under the Amended Plan can occur is obtaining a clearance certificate pursuant to section 159 of the Income Tax Act or such other comfort, satisfactory to the Monitor, from the Canada Revenue Agency (the "**CRA**") with respect to the distributions.
7. The New Walter Canada Group has filed its applications for clearance certificates and the New Walter Canada Group and the Monitor have been in contact with the CRA to seek an expedited review of the applications. The New Walter Canada Group understands that the Monitor will provide a report in mid-February with an update regarding the New Walter Canada Group's progress in obtaining the clearance certificates.
8. In addition to obtaining a clearance certificate and making the distributions contemplated in the Amended Plan, the New Walter Canada Group will also be required to wind up Walter UK in accordance with the terms of the Settlement Term Sheet among the New Walter Canada Group, Warrior and the 1974 Plan dated October 10, 2017 (the "**Settlement Agreement**").
9. Walter UK and the New Walter Canada Group have determined the best way for each of the Walter UK companies to be wound up and have consulted with Warrior regarding the process. The New Walter Canada Group is seeking this Court's authorization to proceed with the wind-up of Walter UK.
10. Walter UK will not require funding from the New Walter Canada Group to complete the proposed wind-up.
11. 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 and through to the April 3, 2019 outside date for the implementation of the Amended Plan.
12. The New Walter Canada Group has been proceeding in good faith and with due diligence in these proceedings.
13. 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 and through to the April 3, 2019 outside date for the implementation of the Amended Plan.

14. The date for the requested stay extension is appropriate in light of the outside date for implementing the Amended Plan.
15. It is in the best interests of the New Walter Canada Group and all its stakeholders that the Stay Period be extended to March 8, 2019, to allow the New Walter Canada Group to obtain a clearance certificate or such other comfort, satisfactory to the Monitor, from the CRA, to take any other steps necessary for implementing the Amended Plan, to wind up Walter UK, and to continue to address the claim asserted by Mr. Kevin James.

Part 3: LEGAL BASIS

The Order Should be Granted

16. Section 11.02(2) of the CCAA gives this Court express jurisdiction to extend the Stay Period.
17. Under s. 11.02(3), on an application seeking a stay extension, the Court will consider whether (i) the applicant has acted, and is acting, in good faith and with due diligence; and (ii) if circumstances exist that make the order appropriate.
18. Under s. 11 of the CCAA, the Court has broad authority to grant other orders, including an order authorizing the New Walter Canada Group to cause Walter UK to be wound up.
19. The New Walter Canada Group has been acting in good faith and with due diligence in these proceedings.
20. It is appropriate to grant the order because such an Order will allow the New Walter Canada Group additional time to obtain a clearance certificate or such other comfort, satisfactory to the Monitor, from the CRA, to take any other steps necessary for implementing the Amended Plan and permitting distributions to creditors to occur, to wind up Walter UK in accordance with the Settlement Agreement, and to continue to address the James Claim.
21. Therefore, the requested order should be granted.

Other Grounds

22. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended;
23. *Supreme Court Civil Rules*, BC Reg 168/2009, including Rules 8-1 and 13-1; and
24. 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 Twenty-fourth Aziz Affidavit;
2. Monitor's Twentieth 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 ^{30 minutes} ~~1 hour~~.

SO

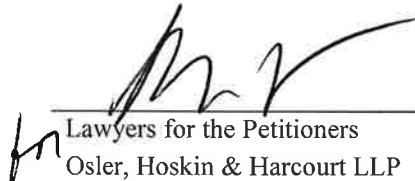
- ☐ This matter is within the jurisdiction of a master.

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: November 1, 2018



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

To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
<input type="checkbox"/>	with the following variations and additional terms:
Date: _____	Signature of
	<input type="checkbox"/> Judge <input type="checkbox"/> Master

TAB A

SCHEDULE "A"

(see attached)

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TAB B

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
(Stay Extension and Walter UK)**

BEFORE THE HONOURABLE
MADAM JUSTICE FITZPATRICK

)
)
)

WEDNESDAY, THE SEVENTH DAY OF
NOVEMBER, 2018

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 7th day of November, 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 24th Affidavit of William E. Aziz sworn November 1, 2018, and the 20th Report of KPMG Inc. in its capacity as Monitor dated ●, 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**").

STAY EXTENSION

3. The Stay Period, as defined in paragraph 18 of the Initial Order, is hereby further extended up to and including March 8, 2019.

WIND-UP OF WALTER UK

4. The Petitioners are hereby authorized to cause each of Energybuild Group Limited, Energybuild Holdings Limited and Energybuild Opencast Limited (collectively "**Walter UK**") to be wound up in such manner as the Petitioners determine, and to take any additional steps and execute, or cause any member of Walter UK to execute, any additional documents as may be necessary or desirable in their discretion, and the director of the Petitioners shall have no liability for any action taken in connection with the foregoing.

GENERAL

5. 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

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
(Stay Extension Order)

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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
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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CORP., NEW WOLVERINE COAL CORP. AND CAMBRIAN
ENERGYBUILD HOLDINGS ULC

PETITIONERS

**NOTICE OF APPLICATION
(Stay Extension)**

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