



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 WALTER ENERGY CANADA HOLDINGS, INC., AND THE OTHER PETITIONERS
LISTED IN SCHEDULE "A" TO THE INITIAL ORDER

PETITIONERS

NOTICE OF APPLICATION

Name of applicants: Walter Energy Canada Holdings, Inc. ("**Walter Energy Canada**") and the other Petitioners listed on **Schedule "A"** (collectively with the partnerships listed on Schedule "A" hereto, the "**Walter Canada Group**")

To: Service List (attached hereto as **Schedule "B"**)

TAKE NOTICE that an application will be made by the Walter Energy Group to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, B.C., V6Z 2E1, on Monday, **December 12, 2016** at 10:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order substantially in the forms attached hereto as **Schedules "C"**.

Part 2: FACTUAL BASIS

1. Reference is made to the facts set out in Affidavit #5 of William E. Aziz (the "**Fifth Aziz Affidavit**") and the Affidavit #7 of William E. Aziz (the "**Seventh Aziz Affidavit**").
2. 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*, RSC 1985, c. C-36 ("**CCAA**"). The Initial Order also appointed KPMG Inc. as the Monitor of the Walter Canada Group.

3. The terms of the Initial Order, including the stay of proceedings, were granted on December 7, 2015 and subsequently extended multiple times. The most recent stay extension expires on January 17, 2017.
4. On August 16, 2016 this Honourable Court granted an order setting a claims process for the Walter Canada Group (the "**Claims Process Order**"). Capitalised terms not otherwise defined have the meaning ascribed in the Claims Process Order.
5. Conuma Coal Resources Limited agreed to purchase the principal assets of the Walter Canada Group pursuant to an asset purchase agreement dated August 8, 2016. This transaction was approved by the Court pursuant to an Approval and Vesting Order pronounced August 16, 2016.
6. At the time of the approved principal asset purchase, the Walter Canada Group indicated an intention to realize value from any remaining assets of the Walter Canada Group (the "**Residual Assets**") at a later date. The Walter Canada Group now seeks to realize the value from the Residual Assets through implementation of a series of transactions, which include:
 - (a) the incorporation of new entities under the British Columbia *Business Corporations Act*, S.B.C. 2002, c. 57, to consist of a new corporation ("**New Walter**") as a wholly owned subsidiary of Walter Energy, Inc., a new corporation ("**New WCCP**") as a wholly owned subsidiary of New Walter; and new corporations ("**New Wolverine**", "**New Brule**", and "**New Willow**") as wholly owned subsidiaries of New WCCP (these five new corporations collectively comprising the "**New Walter Group**");
 - (b) from and after the date of formation of the New Walter Group, deeming each member of the New Walter Group to be a debtor company as defined in the CCAA, to be subject to the CCAA proceedings, and to be added as a Petitioner in the CCAA proceedings;
 - (c) from and after the date of the formation of the New Walter Group, extending all the provisions of the Initial Order and the Order of this Honourable Court made on January 5, 2016 (the "**SISP Order**") to the members of the New Walter Group and extending the appointment of the Monitor to the New Walter Group;
 - (d) appointing BlueTree as CRO of the New Walter Group and providing that the powers, responsibilities and protections set out in the SISP Order shall apply and continue to apply in respect of such appointment;

- (e) causing the Administration Charge, the Directors' Charge, and the Success Fee Charge to attach to all property of the New Walter Group (including for greater certainty any after acquired property);
 - (f) terminating the engagement of the CRO with respect to a member of the Walter Canada Group at the last moment of time before the assignment in bankruptcy of such member of the Walter Canada Group becomes effective; and
 - (g) conducting a sale transaction (the "**Transaction**") as contemplated by the Term Sheet among Walter Energy Canada, as vendor, and 1098138 B.C. Ltd., as purchaser (the "**Purchaser**") and Amacon Land Corporation, as guarantor, made November 28, 2016 (the "**Term Sheet**").
7. On December 7, 2016, this Honourable Court pronounced an order approving, *inter alia*, the Transaction and the Term Sheet (the "**CCAA Approval Order**").
8. Following the pronouncement of the CCAA Approval Order, the Purchaser requested several amendments to the Transaction in order to better effect the purpose of the Transaction. The Walter Group does not believe that the amendments to the Transaction are material or detrimental to the benefits of the Transaction to the creditors of the Walter Group and should not affect the Court's earlier analysis and approval. Details of the amendments requested are attached as Exhibit "A" of the Seventh Aziz Affidavit. The amendments to the Transaction are supported by the Monitor.
9. The Petitioners have been and continue to act with good faith and due diligence in these proceedings.

Part 3: LEGAL BASIS

1. The Petitioners specifically rely on:
- (a) *Companies' Creditors Arrangement Act*, RSC 1985, c C-36;
 - (b) *Business Corporations Act*, SBC 2002, c 57;
 - (c) *Supreme Court Civil Rules*, BC Reg 241/2010;
 - (d) the inherent and equitable jurisdiction of this Honourable Court; and
 - (e) such further and other grounds as counsel may advise and this Honourable Court may deem just.

Authority to Authorize the Transaction

2. Section 36 of the CCAA does not apply because the Transaction contemplates a proposal to creditors being voted on and approved by the court.
3. However, in the event that section 36 of the CCAA does apply, all of the factors enumerated in section 36 of the CCAA are met, as set out in the Fifth Aziz Affidavit:

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.

Court's Discretion Under s. 11 of the CCAA

4. Section 11 of the CCAA provides the court with the general power and discretion to make any order that is appropriate in the circumstances:

11. 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.

5. Accordingly, based on the language of section 11 of the CCAA, the court has the jurisdiction and the discretion to make any order that realistically advances the CCAA's broad, remedial purpose to "enable compromises to be made for the common benefit of the creditors and of the company, particularly to keep a company in financial difficulties alive and out of the hands of liquidators."

Century Services Inc. v Canada (AG), 2010 SCC 60 at paras 59 - 71

Re Northland Properties Ltd., (sub nom. Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada), [1989] 3 WWR 363, 34 BCLR (2d) 122

6. In complex reorganizations of large companies courts have been asked to exercise their jurisdiction and discretion in innovative ways by sanctioning measures “for which there is no explicit authority in the CCAA.”

Century Services at para 61

7. The “incremental exercise of judicial discretion” under the CCAA is the “primary method by which the CCAA has been adapted and has evolved to meet contemporary business and social needs.”

Century Services at para 58

8. Accordingly, as long as the measures sought are consistent with the broad, remedial purpose of the CCAA, the Court has the inherent discretion to grant relief that is not expressly codified in the legislation.

Century Services, at paras 58-62

9. In the present circumstances, approval of the amendments to the Transaction serves the interests of the company and its creditors, thereby advancing the broad, remedial purpose of the CCAA. The Transaction, as amended, will preserve and maximize the value of the Walter Canada Group without requiring the creditors to compromise their respective interests and/or their security in the company. The net result is an increase in the value available to creditors, which is consistent with the CCAA, and the order sought is “in furtherance of the CCAA’s [remedial] purposes”.

Century Services at para 59

10. In the circumstances, it is appropriate to authorize the amendments to the Transaction, as the amendments do not materially alter the relevant factors which were subject to the Court’s original analysis and approval of the Transaction and the granting of the CCAA Approval Order.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #5 of William E. Aziz, sworn December 2, 2016;
2. Affidavit #6 of William E. Aziz, sworn December 2, 2016;
3. Affidavit #7 of William E. Aziz, sworn December 11, 2016;

4. Monitor's Sixth Report, filed December 6, 2016;
5. Confidential Monitor's Report, filed December 7, 2016;
6. Monitor's Seventh Report, to be filed;
7. pleadings and other materials filed herein; and
8. such further and other materials as counsel may advise and this Honourable Court may permit.

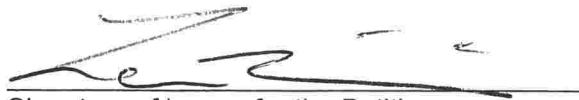
The Petitioners estimate that the application will take 30 minutes.

- 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 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 Petitioners 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).

December 11, 2016
Dated _____



Signature of lawyer for the Petitioners

DLA Piper (Canada) LLP
(Mary I.A. Buttery and H. Lance Williams)

and

Osler, Hoskin & Harcourt LLP
(Marc Wasserman and Patrick Riesterer)

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

APPENDIX

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

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- oral 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
- other

SCHEDULE "A"

Petitioners

1. Walter Canadian Coal ULC
2. Wolverine Coal ULC
3. Brule Coal ULC
4. Cambrian Energybuild Holdings ULC
5. Willow Creek Coal ULC
6. Pine Valley Coal, Ltd.
7. 0541237 B.C. Ltd.

Partnerships

1. Walter Canadian Coal Partnership
2. Wolverine Coal Partnership
3. Brule Coal Partnership
4. Willow Creek Coal Partnership

SCHEDULE "B"

See Attached

SERVICE LIST

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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 AND ARRANGEMENT
OF WALTER ENERGY CANADA HOLDINGS, INC., AND THE OTHER PETITIONERS
LISTED ON SCHEDULE "A"

PETITIONERS

ORDER MADE AFTER APPLICATION
(Amendment to New Walter Group Procedure Order)

BEFORE THE HONOURABLE)
MADAM JUSTICE FITZPATRICK) MONDAY, THE 12TH DAY OF
) DECEMBER, 2016

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 12th day of December, 2016; AND ON HEARING Mary I.A. Buttery, H. Lance Williams and Patrick Riesterer, counsel for the Petitioners and the Partnerships listed on **Schedule "A"** hereto (collectively, the "**Walter Canada Group**"), Peter Reardon, counsel for KPMG Inc. and those other counsel listed on **Schedule "B"** hereto; AND UPON READING the material filed, including the 5th Affidavit of William E. Aziz sworn December 2, 2016, the 6th Affidavit of William E. Aziz sworn December 2, 2016, the 7th Affidavit of William E. Aziz sworn December 11, 2016 (the "**Seventh Affidavit**"), the Sixth Report of the Monitor dated December 5, 2016, the Confidential Supplemental Report to the Sixth Report of the Monitor dated December 5, 2016, and the Seventh Report of the Monitor dated December 11, 2016;

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.

TRANSACTION APPROVAL

2. The amendments (the "**Amendments**") as set in the letter attached as Exhibit "A" to the Seventh Affidavit (the "**Amendment Letter**"), to the sale transaction approved by this court by order pronounced December 7, 2016, among Walter Canada Group, 1098138 B.C. Ltd., and Amacon Land Corporation (the "**Transaction**"), are approved, and the Transaction as amended by the Amendments is commercially reasonable. The execution of the Amendment Letter by Walter Canada Group is hereby authorized and approved, and the Walter Canada Group is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, as amended, including the execution of ancillary documents.

GENERAL

3. Each of the Walter Canada Group, the New Walter Group (as defined in the order of this Court pronounced December 7, 2016), and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Walter Canada Group and the New Walter Group to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.
4. 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 Walter Canada Group, the New Walter Group 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 Walter Canada Group, the New Walter Group 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

DLA Piper (Canada) LLP
(Mary I.A. Buttery and H. Lance Williams)

and

Osler, Hoskin & Harcourt LLP
(Marc Wasserman and Patrick Riesterer)

BY THE COURT

REGISTRAR

SCHEDULE "A"

Petitioners

1. Walter Canadian Coal ULC
2. Wolverine Coal ULC
3. Brule Coal ULC
4. Cambrian Energybuild Holdings ULC
5. Willow Creek Coal ULC
6. Pine Valley Coal, Ltd.
7. 0541237 B.C. Ltd.

Partnerships

1. Walter Canadian Coal Partnership
2. Wolverine Coal Partnership
3. Brule Coal Partnership
4. Willow Creek Coal Partnership

NO. S-15010120
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 A PLAN OF COMPROMISE AND
ARRANGEMENT OF WALTER ENERGY CANADA
HOLDINGS, INC., AND THE OTHER PETITIONERS LISTED
IN SCHEDULE "A" TO THE INITIAL ORDER

PETITIONERS

NOTICE OF APPLICATION

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File No. 15375-00001

LZW/sd