



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 February 27<sup>th</sup>, 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) amending paragraph 3 of the Order pronounced on December 13, 2017 by this Honourable Court (the "**Stay Extension & Energybuild Order**"), *nunc pro tunc*, to replace the words "Energybuild Ltd." with "Energybuild Holdings Limited".
  - (b) extending the stay of proceedings in respect of the New Walter Canada Group to April 16, 2018.

**Part 2: FACTUAL BASIS**

1. Reference is made to the facts set out in the Affidavit of William E. Aziz sworn February 21, 2018 (the "**Eighteenth Aziz Affidavit**").

2. Any capitalized term used but not defined below shall have the meaning given to it in the Eighteenth 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**").

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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;
  - (f) to October 6, 2017 pursuant to an Order of this Honourable Court pronounced May 30, 2017;
  - (g) to December 15, 2017, pursuant to an Order of this Honourable Court pronounced October 6, 2017; and
  - (h) to February 28, 2017, pursuant to an Order of this Honourable Court pronounced December 13, 2017.

#### **Correction to Stay Extension & Energybuild Order**

5. The Stay Extension & Energybuild Order contained an error that the New Walter Canada Group is seeking to correct.
6. In paragraph 3, the Order authorized "Energybuild Ltd." to execute the offer letter from Speciality Carbons (the "**Offer Letter**").
7. However, the Offer Letter was executed by Energybuild Holdings Limited ("**Energybuild Holdings**") regarding the sale of Energybuild Limited and its affiliates, and not by Energybuild Limited in respect of itself.
8. The New Walter Canada Group had always intended to seek and obtain an Order authorizing Energybuild Holdings (and not Energybuild Limited) to enter into the Offer Letter.
9. The reference to "Energybuild Ltd." in paragraph 3 of the Stay Extension & Energybuild Order was a typographical error.
10. Therefore, the New Walter Canada Group is seeking an order correcting this error.

### **Stay Extension**

11. The New Walter Canada Group is requesting an extension of the Stay Period until and including April 16, 2018.
12. 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.
13. The New Walter Canada Group has been proceeding in good faith and with due diligence in these proceedings.
14. 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.
15. It is anticipated that the New Walter Canada Group will be seeking to file a plan of arrangement within the proposed extended Stay Period.
16. It is in the best interests of the New Walter Canada Group and all its stakeholders that the Stay Period be extended to April 16, 2018, to allow the New Walter Canada Group to finish preparing a plan of compromise and arrangement that can be put to the New Walter Canada Group's creditors, close the transaction with Specialty Carbons (if approved by the Court), and continue litigating Kevin James' claim.

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

#### **The Stay Extension & Energybuild Order should be Corrected**

17. Rule 13-1 (17) of the *Supreme Court Civil Rules* provides this Court express jurisdiction to "at any time correct a clerical mistake in an order or an error arising in an order from an accidental slip or omission".
18. Even if an order has been entered and the Court is otherwise *functus*, this Court has the power to revisit and correct an order if "there has been a 'slip' in drawing up the order" or "where there has been an error in expressing the manifest intention of the court."  

*Harrison v Harrison*, 2007 BCCA 120 at para 29
19. The New Walter Canada Group had requested and always intended to request and obtain an Order authorizing Energybuild Holdings (and not Energybuild Limited) to enter into the Offer Letter.
20. The reference to "Energybuild Ltd." in paragraph 3 of the Stay Extension & Energybuild Order was a typographical error.
21. Therefore, the Stay Extension & Energybuild Order should be corrected.

#### **The Stay Extension Should be Granted**

22. Section 11.02(2) of the CCAA gives this Court express jurisdiction to extend the Stay Period.
23. 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.

24. The New Walter Canada Group has been acting in good faith and with due diligence in these proceedings.
25. It is appropriate to grant the stay extension because such an Order will permit the New Walter Canada Group to finish preparing a plan of compromise and arrangement that can be put to the ~~New Walter Canada Group's creditors, close the transaction with Specialty Carbons (if approved by the Court), and continue litigating Mr. James' claim.~~
26. Therefore, the requested stay extension should be granted.

**Other Grounds**

27. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.
28. *Supreme Court Civil Rules*, BC Reg 168/2009, including Rules 8-1 and 13-1.
29. 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 Eighteenth Aziz Affidavit;
2. Monitor's 16th 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 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 21, 2018

LL

Lawyers for the Petitioners

Osler, Hoskin & Harcourt LLP

(Marc Wasserman, Patrick Riesterer & Mary Paterson)

<b>To be completed by the court only:</b>	
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

**SCHEDULE "A"**  
**(see attached)**

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**SERVICE LIST**

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**SCHEDULE "B"**

**(see attached)**

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NO. S-1510120  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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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)**

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 18<sup>th</sup> Affidavit of William E. Aziz sworn February 21, 2018, and the Sixteenth Report of KPMG Inc. in its capacity as Monitor dated February 16, 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**").

**CORRECTION TO DECEMBER 13, 2017 ORDER**

3. The phrase "Energybuild Ltd." in paragraph 3 of the Order of this Court dated December 13, 2017 is hereby deleted in its entirety and replaced with ""Energybuild Holdings Limited", which shall be effective *nunc pro tunc* as of the date of such Order.
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**STAY EXTENSION**

5. The Stay Period, as defined in paragraph 18 of the Initial Order, is hereby further extended up to and including April 16, 2018.

**GENERAL**

6. 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:

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\_\_\_\_\_  
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

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

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**ORDER MADE AFTER APPLICATION  
(Stay Extension Order)**

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**OSLER HOSKIN & HARCOURT LLP**

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Tel. No. 416.862.4924  
Fax No. 416.862.6666

Client Matter No. 1164807

NO. S-1510120  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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IN THE MATTER OF THE *COMPANIES' CREDITORS*  
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**NOTICE OF APPLICATION**  
**(Stay Extension Order)**

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