



This is the 30th Affidavit of William E. Aziz in this case and was made on February 12, 2020

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

**AFFIDAVIT**

I, **WILLIAM E. AZIZ**, Chief Restructuring Officer, of the Town of Oakville, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of BlueTree Advisors Inc. ("**BlueTree**"), which has been retained to provide my services as Chief Restructuring Officer ("**CRO**") to the Petitioners (the "**New Walter Canada Group**"). As such I have personal knowledge of the facts hereinafter deposed, except where such facts are stated to be based upon information and belief, and where so stated I do verily believe the same to be true.
2. This affidavit is made in support of an application by the New Walter Canada Group under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") seeking an order (the "**CCAA Termination Order**"), among other things, providing the following relief:
  - (a) authorizing each member of the New Walter Canada Group to make an assignment into bankruptcy;

- (b) providing that these CCAA proceedings shall be terminated upon the New Walter Canada Group making an assignment into bankruptcy (the "**CCAA Termination Time**") and related ancillary relief;
  - (c) discharging the Monitor and the CRO upon the CCAA Termination Time;
  - (d) granting the releases set out in the proposed CCAA Termination Order (the "**Releases**"); and
  - (e) extending the stay of proceedings until the CCAA Termination Time.
3. I was initially retained by Walter Energy Canada Holdings, Inc. ("**Walter Energy Canada**") to provide my services as CRO to Walter Energy Canada, its direct and indirect subsidiaries and affiliates, and the partnerships listed on Schedule "C" to the Initial Order (collectively, the "**Old Walter Canada Group**"). I was retained pursuant to an engagement letter dated December 30, 2015, as amended in response to certain requests made by Old Walter Canada Group stakeholders. BlueTree was appointed as CRO of the Old Walter Canada Group pursuant to an Order of this Honourable Court made on January 5, 2016.
4. My engagement as CRO of the Old Walter Canada Group, other than as CRO of Cambrian Energybuild Holdings ULC ("**Cambrian**"), was terminated on December 15, 2016, when the entities comprising that group filed for bankruptcy.
5. The companies comprising the New Walter Canada Group (other than Cambrian) were incorporated on December 8, 2016, pursuant to the authorization granted in paragraph 5 of the Order of this Honourable Court made on December 7, 2016 (the "**CCAA Procedure Order**"). Each such company became a petitioner in these CCAA proceedings and subject to the CCAA Charges (as defined in the CCAA Procedure Order), and I became CRO of each new company in the New Walter Canada Group when the companies were formed.

Update regarding CCAA Proceedings

6. These proceedings are largely complete. Substantially all of the Old Walter Canada Group and New Walter Canada Group's assets have been sold in transactions approved by the Court. The New Walter Canada Group's Amended and Restated Plan of Compromise and Arrangement dated June 22, 2018 (the "**Amended Plan**") was sanctioned by this Court in an Order granted on July 23, 2018 (the "**Sanction Order**") and the Amended Plan was implemented as of April 24, 2019. There are no unresolved claims remaining in this proceeding and all Proven Claims (as defined in the Amended Plan) have been paid.

7. At the last stay extension application on November 22, 2019, there were two remaining issues that had to be addressed before these proceedings could be terminated.
8. First, in order to make a distribution to employees pursuant to the Amended Plan, Service Canada needed to complete some calculations in respect of repayment of employment benefits received by former employees of the Old Walter Canada Group. I understand that Service Canada completed its calculations and the Monitor made the distributions to employees in December 2019.
9. Second, the New Walter Canada Group had to wind up Energybuild Group Limited ("**EBG**"), Energybuild Holdings Limited ("**EBH**"), and Energybuild Opencast Limited ("**EBO**", and, collectively with EBG and EBH, "**Walter UK**"). Under the Settlement Term Sheet among the New Walter Canada Group, the United Mine Workers of America 1974 Pension Plan and Trust, and Warrior Met Coal LLC ("**Warrior**") dated October 10, 2017 (the "**Settlement Agreement**"), Walter UK is to be wound up in a cost effective and tax efficient manner that protects its directors and officers from liability to the fullest extent possible.
10. On November 7, 2018, this Honourable Court made an Order (the "**November 7 Order**") authorizing the New Walter Canada Group to cause Walter UK to be wound up in a manner that it determines in consultation with Warrior.
11. The New Walter Canada Group has been acting diligently to wind up Walter UK since obtaining the November 7 Order, and I have been in regular contact with KPMG UK (which is advising on the winding up of Walter UK) and with the purchasers of EBG's subsidiaries (Energybuild Limited, Energybuild Mining Limited, and Mineral Extraction and Handling Limited) to ensure that all separation issues are addressed properly.
12. EBO was dissolved on May 14, 2019 through a voluntary strike off whereas EBG and EBH are currently in a members' voluntary liquidation.
13. A number of steps in EBG and EBH's voluntary liquidation have been completed. All statutory documentation and notices regarding the commencement of EBG and EBH's liquidations and the appointment of the liquidators have been received by the Registrar of Companies. The required statutory notices were published in the London Gazette on June 18, 2019. The creditor claim deadline was July 22, 2019, and no claims were forthcoming. Funds totalling £554,653.75 held on behalf of EBH prior to liquidation have been transferred to a liquidation estate bank account controlled by the liquidators.
14. The remaining steps to liquidate EBG and EBH comprise two phases. The first phase is composed of the tasks leading up to the payment of all surplus cash to Warrior. The second phase is the period thereafter in which EBG and EBH are finally dissolved.

15. The first phase requires addressing various tax liability issues with HM Revenue & Customs (“HMRC”) as detailed below:
  - (a) *Value added tax (“VAT”)*: As the Walter UK companies were registered as part of a VAT group, forms have been submitted to HMRC to (i) replace EBG as the representative of the VAT group with another member of the VAT group not in liquidation; (ii) remove all Walter UK companies from the VAT group; and (iii) obtain VAT repayments owing to EBG and EBH. Once EBG and EBH are removed from the VAT group, the liquidators must obtain formal clearance from HMRC’s Enforcement and Insolvency Service that there are no outstanding liabilities in respect of VAT and pay-as-you-earn tax (“PAYE”) matters.
  - (b) *Corporation tax*: Final corporation tax returns have also been prepared and submitted to HMRC on behalf of EBG and EBH along with a formal request for clearance confirming that there are no outstanding corporation tax liabilities and that HMRC has no objection to the liquidators proceeding to finalize the liquidations.
16. The liquidators received clearance from HMRC in respect of corporation tax on January 21, 2020. In addition, HMRC recently advised the liquidators that they will be receiving clearance in respect of VAT and PAYE matters, and the liquidators expect that they will receive a formal letter confirming clearance for VAT and PAYE matters shortly. Therefore, the New Walter Canada Group expects that it will be able to settle the costs of liquidation and have the surplus cash paid to Warrior in full and final settlement of the debt owing to Warrior by Walter UK soon.
17. The second phase includes sending the liquidators’ draft final accounts of the liquidations to the members together with notice of the intention to deliver the final account to members and the Registrar of Companies after a minimum of 8 weeks. The liquidators obtain their release from office upon delivery of the final account to the Registrar of Companies and the companies will be dissolved approximately three months later.

#### Termination of CCAA Proceedings

18. In order to complete the administration of its estate, the New Walter Canada Group needs to file its 2019 tax return, make a final distribution to Warrior from the Canadian estate and arrange for the payment of surplus cash from Walter UK to Warrior. As noted above, the New Walter Canada Group expects that these steps will be completed within a few months.
19. To avoid incurring the time and costs of a further application to seek an order terminating these CCAA proceedings, the New Walter Canada Group is seeking the CCAA Termination Order that authorizes members of the New Walter Canada Group to make an assignment into bankruptcy (which will be done once all remaining matters in this CCAA proceeding have been completed),

that terminates these CCAA proceedings, and that discharges the CRO and Monitor once the New Walter Canada Group has been assigned into bankruptcy. In the period between this application and the CCAA Termination Time, the Monitor will make an interim distribution to Warrior as is permitted by the Amended Plan.

20. The CCAA Termination Order also provides for certain ancillary relief, including the following:
- (a) After the CCAA Termination Time, the Monitor will file a certificate confirming that all members of the New Walter Canada Group have made an assignment into bankruptcy, the CCAA Termination Time has occurred, and the CCAA proceeding is terminated.
  - (b) The Monitor is directed and authorized to withhold an amount from the Deemed Interest Claim Distribution Cash Pool (as defined in the Amended Plan) to fund the New Walter Canada Group's bankruptcy proceedings (including the associated fees of the CRO) as well as amounts on account of the fees and costs incurred by the Monitor and its counsel and advisors in connection with post-discharge duties, amounts on account of uncashed cheques for distributions pursuant to the Amended Plan, and costs associated with the retention and destruction of the New Walter Canada Group's books and records. I am advised by Marc Wasserman of Osler, Hoskin & Harcourt LLP, counsel for the New Walter Canada Group, and believe that counsel representing Warrior (the only party entitled to receive distributions from the Deemed Interest Claim Distribution Cash Pool) has consented to the Monitor withholding these funds.
  - (c) The Monitor shall remain Monitor after the CCAA Termination Time to complete certain limited post-discharge duties, such as reissuing to Affected Creditors cheques in respect of distributions where the original distribution cheque was undeliverable or uncashed in accordance with Section 6.10 of the Amended Plan and making the final distribution to Warrior contemplated by the Amended Plan.
  - (d) Similarly, the CRO shall remain CRO after the CCAA Termination Time to complete certain limited post-discharge duties in respect of the New Walter Canada Group's proposed bankruptcy proceedings.
  - (e) The Monitor is authorized to make any arrangements that it deems necessary for the storage and destruction of the New Walter Canada Group's books and records in a manner and at a time within the Monitor's discretion. The Monitor has in its possession copies of the New Walter Canada Group's records. As the New Walter Canada Group's assets have been sold, and operational records have been transferred to any purchasers, it is appropriate for the Monitor, in its sole discretion, to be authorized to store and destroy

these records, as appropriate. An amount will be held by the Monitor on account of the costs associated with such destruction will be paid for using funds in the estate.

(f) The CCAA Termination Order grants the Releases that are substantially identical to the releases granted in the Amended Plan and approved in the Sanction Order. The New Walter Canada Group believes that the Releases are necessary because of the unexpected amount of time it has taken to finish implementing the Amended Plan and to complete all outstanding matters in these CCAA proceedings. One of the intended beneficiaries of the Releases is Danny L. Stickel. Mr. Stickel was a director of each of the Old Walter Canada Group entities and is the sole director of each of the New Walter Canada Group entities. I understand that notice of the New Walter Canada Group's application for the CCAA Termination Order (including the Releases) will be provided to the Service List on or shortly following the date of this affidavit.

21. The CCAA Termination Order does not require the Monitor to retain any reserves for potential claims that have not been asserted in these proceedings and I understand that the Monitor will not be retaining any such reserve. I am not aware of any potential unasserted claim and any such claims would be barred by the Amended Plan, the Claims Process Order made on August 16, 2016, and the Claims Process Amendment Order made on August 15, 2017.

#### Stay Extension

22. This Honourable Court granted a stay of proceedings in the Initial Order, until January 6, 2016 or such later date as this Honourable Court may order (the "**Stay Period**"). On January 5, 2016, this Honourable Court extended the Stay Period until and including April 5, 2016. On March 30, 2016, this Honourable Court extended the Stay Period until and including June 24, 2016. On June 24, 2016, this Honourable Court extended the Stay Period until and including August 19, 2016. On August 16, 2016, this Honourable Court extended the Stay Period until and including January 17, 2017. On January 16, 2017, this Honourable Court extended the Stay Period until and including May 31, 2017. On May 30, 2017, this Honourable Court extended the Stay Period until and including October 6, 2017. On October 6, 2017, this Honourable Court extended the Stay Period until and including December 15, 2017. On December 13, 2017, this Honourable Court extended the Stay Period until and including February 28, 2018. On February 27, 2018, this Honourable Court extended the Stay Period until and including April 16, 2018. On April 10, 2018, this Honourable Court extended the Stay Period until and including June 1, 2018. On May 31, 2018, this Honourable Court extended the Stay Period until and including December 1, 2018. On November 7, 2018, this Honourable Court extended the Stay Period until and including March 8, 2019. On February 25, 2019, this Honourable Court extended the Stay Period until and including May 6, 2019. On May 1, 2019, this Honourable Court extended the Stay Period until and including

August 16, 2019. On August 13, 2019, this Honourable Court extended the Stay Period until and including November 26, 2019. On November 22, 2019, this Honourable Court extended the Stay Period until and including February 28, 2020.

- 23. The New Walter Canada Group is requesting an extension of the Stay Period until and including CCAA Termination Time.
- 24. During the proposed extended Stay Period, the New Walter Canada Group and the Monitor intend to finish winding up Walter UK, assign the New Walter Canada Group into bankruptcy once all outstanding matters have been addressed, and terminate these CCAA proceedings.
- 25. Based on my understanding of the current cash balance being held by the Monitor, the estimated fees and costs to be incurred in connection with this proceeding until CCAA Termination Time, and the amount of the holdbacks that will be retained by the Monitor under the proposed CCAA Termination Order, I do verily believe that the New Walter Canada Group will have sufficient operating cash to continue operations during the proposed extended Stay Period.
- 26. The New Walter Canada Group has been proceeding in good faith and with due diligence in these proceedings.
- 27. It is my understanding that the Monitor supports the extension of the Stay Period and will file a report including information that demonstrates, 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.
- 28. It is in the best interests of the New Walter Canada Group and all its stakeholders that the Stay Period be extended to the CCAA Termination Time to permit completing winding up the remaining Walter UK entities, paying the surplus cash from Walter UK to Warrior, assigning the New Walter Canada Group into bankruptcy, and terminating these CCAA proceedings.

SWORN BEFORE ME at Oakville, in the Province of Ontario, on February 12, 2020

Waleed Malik

Commissioner for Taking Affidavits and Notary Public in the Province of Ontario

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William E. Aziz

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HOLDINGS ULC

PETITIONERS

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**AFFIDAVIT #30 OF WILLIAM E. AZIZ**

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**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