



This is the 25th Affidavit of William E. Aziz in this case and was made on February 20, 2019

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 a motion by the New Walter Canada Group under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") seeking an Order, among other things, extending the stay of proceedings in respect of the New Walter Canada Group to May 6, 2019 and imposing a schedule to resolve the claim asserted by Kevin James (the "**James Claim**").
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 the Order of this Honourable Court made on January 5, 2016 (the "**SISP Order**").

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.

#### Plan Implementation Matters

6. On July 3, 2018, this Honourable Court granted an Order (the "**Sanction Order**") sanctioning the New Walter Canada Group's Amended and Restated Plan of Compromise and Arrangement dated June 22, 2018 (the "**Amended Plan**"). Since obtaining the Sanction Order, the New Walter Canada Group has been acting diligently to satisfy prerequisites for implementing the Amended Plan.
7. 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. As described in my twenty-fourth affidavit sworn in these proceedings on November 1, 2018 (the "**Twenty-fourth Aziz Affidavit**"), the New Walter Canada Group, its counsel, the Monitor, and the Monitor's counsel have taken many steps to obtain a clearance certificate or some other comfort from the CRA including providing documents to the CRA, and submitting the applicable TX-19 application for a clearance certificate for each member of the New Walter Canada Group and supporting documentation. In addition, counsel to the New Walter Canada Group sent letters requesting an expedited review to the CRA and the Department of Justice (counsel to the CRA).
8. On December 7, 2018, the Monitor was advised that the request for a clearance certificate had been forwarded to an assigned officer at the CRA. Then, in six letters dated December 10, 2018 addressed to the members of the New Walter Canada Group, the CRA responded that it could not

issue a clearance certificate for the members of the New Walter Canada Group because their corporate (T2) accounts remained active. A copy of the letter addressed to Cambrian is attached as Exhibit "A" (the letters sent to the other members of the New Walter Canada Group were substantially similar).

9. In the letters to the New Walter Canada Group and subsequent discussions with the Monitor, the CRA indicated that it would consider providing a comfort letter in lieu of issuing a clearance certificate, and that it was willing to work with the Monitor and the New Walter Canada Group to prepare a comfort letter with satisfactory language. Subsequently, the Monitor attempted to arrange a call with the CRA and the Department of Justice in order to discuss the status of the New Walter Canada Group's request for clearance, to establish a timeline with the CRA, and to discuss the language for a potential comfort letter. However, the CRA declined to participate in such a call at the time and asked for a draft comfort letter to consider in advance of any call. As a result, the Monitor provided a draft comfort letter to the Department of Justice on January 17, 2019, which I reviewed and I understand has been sent to the CRA for its review.
10. The New Walter Canada Group, the Monitor, and its counsel have made a number of efforts to contact the CRA and its counsel to set up a conference call since January 17, 2019, but to date the CRA and its counsel have said that they are not yet in a position to participate in such a call. The New Walter Canada Group will continue to seek an expedited review of the request for a comfort letter so that distributions under the Amended Plan can be made in as timely a manner as possible in the circumstances.

#### Walter UK

11. In addition to making the distributions contemplated in the Amended Plan, the New Walter Canada Group must wind up Energybuild Group Limited ("**EBG**"), Energybuild Holdings Limited ("**EBH**"), and Energybuild Opencast Limited ("**EBO**", and, collectively with EBG and EBH, "**Walter UK**") in accordance with the terms of the Settlement Term Sheet among the New Walter Canada Group, the United Mine Workers of America 1974 Pension Plan and Trust (the "**1974 Plan**"), and Warrior Met Coal, LLC ("**Warrior**") dated October 10, 2017 (the "**Settlement Agreement**"). In particular, the Settlement Agreement provides that 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.
12. The New Walter Canada Group has been acting diligently to winddown the Walter UK entities since obtaining the Sanction Order. As described in the Twenty-fourth Aziz Affidavit, the Monitor, New Walter Canada Group's legal counsel and I have participated in multiple discussions with the Walter UK advisors to determine the most appropriate method to wind up Walter UK. After considering various options, Walter UK and the New Walter Canada Group determined that EBG and EBH

should be wound up using a members' voluntary liquidation ("**MVL**") whereas EBO would be wound up via a voluntary strike off ("**VSO**").

13. 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, in consultation with Warrior, determines.
14. The following preliminary steps have been completed since the November 7 Order was granted:
  - (a) On January 28, 2019, the remaining debentures issued in favour of Cambrian were released pursuant to deeds of release.
  - (b) On January 30, 2019, the applicable intercompany debt was written down to a lower amount so that each Energybuild entity could make a declaration of solvency.
  - (c) An audit of EBG's financial statements has been completed and the financial statements have been finalized.
15. All preliminary steps to be completed prior to the commencement of the liquidation have now been completed and the New Walter Canada Group will be initiating the proceedings to wind up Walter UK as soon as reasonably practicable.

#### James Claim

16. The New Walter Canada Group has also taken steps to resolve the James Claim, which is the only remaining unresolved claim in this proceeding.
17. Mr. James filed a Notice of Application dated October 6, 2017 (the "**James Application**") alleging that Mr. James is entitled to royalties under a Royalty Sharing Agreement with Western Canadian Coal Corporation and seeking damages in the amount of \$7,150,000 for breach of contract or unjust enrichment. Mr. James retained MNP LLP to provide an expert report to support the damages claimed in the James Application.
18. The New Walter Canada Group filed an Application Response dated November 3, 2017 (the "**Application Response**"). It then sought and obtained a sealing order made on December 13, 2017 (the "**James Claim Confidentiality Order**") for materials containing confidential information. Under the terms of the James Claim Confidentiality Order, the New Walter Canada Group filed a Confidential Affidavit of Steven Colliia sworn December 15, 2017 attaching a responding expert report from PricewaterhouseCoopers LLP, a Confidential Affidavit of Philips Evans sworn December 14, 2017, and a Confidential Monitor's Report.

19. On July 5, 2018, Mr. James posed several substantive questions regarding the New Walter Canada Group's expert evidence. The questions posed by Mr. James raised complex issues that the New Walter Canada Group had to consider before providing a response. Counsel to the New Walter Canada Group responded on December 12, 2018. Mr. James's counsel then posed follow up questions on January 24, 2019, and the New Walter Canada Group's counsel responded on the same day.
20. On January 14, 2019, counsel for the New Walter Canada Group wrote to counsel for Mr. James stating that the James Claim needed to be resolved and proposing the following schedule in order to bring the parties' dispute before the Court prior to the April 3, 2019 Outside Date for implementation of the Amended Plan:
  - (a) Responding Report of MNP (if any): February 8, 2019.
  - (b) Cross-examination of witnesses, subject to their availability: week of February 25, 2019.
  - (c) Written argument of Mr. James: March 11, 2019.
  - (d) Written argument of the New Walter Canada Group: March 18, 2019.
  - (e) Hearing, subject to available Court dates: week of March 25, 2019.
21. On February 1, 2019, counsel for the New Walter Canada Group and counsel to Mr. James had a phone call to discuss scheduling matters. Counsel did not agree on a schedule and discussions are ongoing.
22. In the New Walter Canada Group's view, there are two potential processes for adjudicating the James Claim. The first process would bifurcate the issue of whether Mr. James is entitled to royalties under the Royalty Sharing Agreement from the calculation of damages (if any) he is entitled to. This bifurcated process would be faster and cheaper if the Court determines that Mr. James is not entitled to any royalties. The second process would determine the issues of entitlement and quantum of damages at the same time following one hearing.
23. The proposed dates for both processes are set out below.
  - (a) **Bifurcated Process:**
    - (i) Parties to agree on the admissibility of evidence and conduct of cross-examination of fact witnesses: March 1, 2019.

- (ii) Parties to provide 10-page submissions on disputed evidentiary issues: March 6, 2019.
  - (iii) Court to advise if oral hearing is required on evidentiary issues.
  - (iv) Cross-examinations of fact witnesses (if any): March 11, 12, and 13, 2019.
  - (v) Written argument of Mr. James on entitlement: March 20, 2019.
  - (vi) Written argument of the New Walter Canada Group on entitlement: March 27, 2019.
  - (vii) 1-day hearing on entitlement: earliest available date following March 27, 2019.
- (b) **Non-bifurcated process:**
- (i) Parties to agree on the admissibility of evidence and conduct of cross-examination of fact witnesses: March 1, 2019.
  - (ii) Parties to provide 10-page submissions on disputed evidentiary issues: March 6, 2019.
  - (iii) Court to advise if oral hearing is required on evidentiary issues.
  - (iv) Cross-examinations of fact witnesses (if any): March 11, 12, and 13, 2019.
  - (v) Responding Report of MNP (if any): March 15, 2019.
  - (vi) Written argument of Mr. James on entitlement: March 20, 2019.
  - (vii) Written argument of the New Walter Canada Group on entitlement: March 27, 2019.
  - (viii) 4-day hearing, including cross-examination of experts and submissions: earliest available dates following March 27, 2019.

24. The New Walter Canada Group is requesting that the Court impose one of the two schedules outlined above for resolving the James Claim.

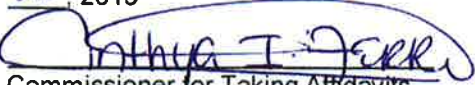
#### Stay Extension

25. 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.

26. The New Walter Canada Group is requesting an extension of the Stay Period until and including May 6, 2019.
27. The Amended Plan provides an Outside Date of April 3, 2019 or a later date agreed to by the New Walter Canada Group, the Monitor, and Warrior acting reasonably. As a result of the delay in obtaining a clearance certificate or other comfort from the CRA, it is possible that the preconditions for implementing the Amended Plan will not be satisfied by April 3, 2019. The New Walter Canada Group's counsel had a phone call with Warrior's counsel on February 19, 2019, to seek Warrior's consent to move the Outside Date. However, Warrior's counsel indicated that Warrior may not be willing to consent to an extension of the Outside Date.
28. The New Walter Canada Group intends to continue seeking a comfort letter from the CRA to satisfy the preconditions for a distribution under the Amended Plan and to take any other steps necessary for implementing the Amended Plan and permitting distributions to creditors to occur before the Outside Date. However, if the CRA does not provide a comfort letter by April 3, 2019 and Warrior does not agree to extend the Outside Date, the New Walter Canada Group will require the remaining extended Stay Period to consider next steps. In addition, the stay extension is being requested to allow the New Walter Canada Group to wind up Walter UK and to complete the James Claim litigation.
29. From my review of the current cash flow projections, I do verily believe that the New Walter Canada Group will have sufficient operating cash to continue operations during the proposed extended Stay Period.

- 30. The New Walter Canada Group has been proceeding in good faith and with due diligence in these proceedings.
- 31. It is my understanding that the Monitor supports the extension of the Stay Period and will file a report attaching a cash flow forecast 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.
- 32. It is in the best interests of the New Walter Canada Group and all its stakeholders that the Stay Period be extended to May 6, 2019 to allow the New Walter Canada Group to obtain a comfort letter from the CRA to satisfy the preconditions for a distribution under the Amended Plan, to take any other steps necessary for implementing the Amended Plan and permitting distributions to creditors to occur before the Outside Date, to consider potential next steps in case these preconditions cannot be satisfied before the Outside Date, to wind up Walter UK, and to complete the James Claim litigation.

SWORN BEFORE ME at Naples, in )  
the State of Florida, on February )  
20, 2019 )  
 )  
Commissioner for Taking Affidavits )  
and Notary Public in the State of )  
Florida )

  
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WILLIAM E. AZIZ





# TAB A

This is Exhibit "A" referred to in Affidavit #25 of William E. Aziz sworn February 20, 2019 at Naples, Florida.



Commissioner for Taking Affidavits and  
Notary Public in the State of Florida





Clearance Certificates  
Sudbury ON P3A 5C1

December 10, 2018

CAMBRIAN ENERGYBUILD HOLDINGS ULC  
C/O KPMG INC. - ANAMIKA GADIA  
BAY ADALAIDE CENTRE  
333 BAY STREET, SUITE 4600  
TORONTO ON M5H 2S5

Account Number  
81131 4301 RC0001

Dear Sir or Madam:

Re: Clearance Certificate

We acknowledge receipt of the form TX19 regarding the sale of Cambrian Energybuild Holdings ULC.

We are unable to process the request for a Clearance at this time as according to our records your Corporate (T2) account remains active.

In general, a person may sell a business or part of a business to a recipient with no GST/HST payable on property supplied under an agreement (with some exceptions) if certain conditions are met if the supplier and the recipient, both being GST/HST make a joint election; before we could issue a Clearance Certificate we would need to confirm this. Consequently, any future filing of requests should be accompanied by a copy of the form TX19, "Asking for a Clearance Certificate" (duly signed by parties) as well as a RC59. Alternatively, in the circumstance that your request was for a "Comfort Letter" instead of a Clearance Certificate, the following is some general information regarding what is now commonly called a "Comfort Letter" or a "Letter of Good Standing".

The document was formerly referred to as a "Clearance" for it was made through the Province (ie: Ministry of Finance); that time the statement was titled a "Section 6 Clearance". Canada Revenue Agency (CRA) presently issues what is termed a "Comfort Letter" or "Letter of Good Standing" as replacement.

Comfort Letters simply confirm that registrants' business accounts are in good standing with the Canada Revenue Agency. Normally these requests apply to the status of the corporate, payroll

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and/or GST/HST accounts. These requests are most commonly made by financial institutions and lawyers; for example, banks request information on a GST/HST or payroll account prior to granting a loan and/or lawyers request a letter during proceedings in an ongoing sale transaction. Requests for letters of good standing (Comfort Letters) may also come from persons who contemplate purchasing real property or a business from a person that might be indebted with the Canada Revenue Agency since those debts would automatically encumber the newly purchased property or business.

A request for a Comfort Letter must be made in writing to the Taxpayer Services Regional Correspondence Centre applicable to legal entity. We issue Comfort Letters for all program accounts (except RT accounts for business residents in the province of Québec). A client can submit their request by mail (London-Windsor TSO 451 Talbot St., London, ON N6A 5E5) or by fax (519-645-4029).

The request must contain the following information:

- Declaration of what is being requested (ie: Comfort letter/Letter of Good Standing).
- BN of the legal entity.
- The program accounts for which the letter is requested (ie: Payroll (RP), GST/HST(RT)).
- Required language of the letter (if different from the language of the request).
- Position and name of the person making the request and a letter of authorization or a completed RC59, Business Consent, as applicable.

The current service standard for responding to most types of correspondence is 4 weeks; however, we do make every effort to action "Comfort Letter" requests within 30 days of receiving written authorization from the client.

If you would still like to proceed with a Clearance Certificate, new request must be submitted with a signed Form TX19, "Asking for a Clearance Certificate". Be sure to include the required documents:

- Confirmation that your business number has been closed.
- A copy of the receipt showing all balances paid.
- A completed Form RC59, "Business Consent", signed by all representatives, authorizing a representative such as accountant or lawyer, if you want us to communicate with another person or firm, or if you want the Clearance Certificate sent to any address other than your own.

If you have any general questions concerning Clearance Certificates or Comfort Letters, you can contact our Business Enquiries Line at 1-800-959-5525, or visit our Canada Revenue Agency website at <https://www.canada.ca/en/revenue-agency.html>.

Yours truly,



M. Ainsworth  
Clearance Certificates  
Audit Division

Enclosure(s)

NO. S-1510120  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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COAL CORP. AND CAMBRIAN ENERGYBUILD  
HOLDINGS ULC

PETITIONERS

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**AFFIDAVIT #25 OF WILLIAM E. AZIZ**

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