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SUPREME COURT SCHEDULING**

**File 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

TWENTY-FIFTH REPORT OF THE MONITOR, KPMG INC.

February 19, 2020

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INTRODUCTION AND PURPOSE OF THE MONITOR'S REPORT

1. KPMG Inc. (“KPMG” or the “Monitor”) was appointed as Monitor pursuant to the Order (the “Initial Order”) issued by this Honourable Court on December 7, 2015 in respect of the petition filed by Walter Energy Canada Holdings, Inc., Walter Canadian Coal ULC, Wolverine Coal ULC, Brule Coal ULC, Cambrian Energybuild Holdings ULC (“Cambrian”), Willow Creek Coal ULC, Pine Valley Coal Ltd. and 0541237 B.C. Ltd. (collectively, the “Original Petitioners”) under the *Companies’ Creditors Arrangement Act*, R.S.C 1985, c. C-36, as amended (the “CCAA”) granting, *inter alia*, a stay of proceedings (the “Stay”) until January 6, 2016. The proceedings brought by the Original Petitioners under the CCAA will be referred to herein as the “CCAA Proceedings”.
2. Pursuant to the Initial Order, the Stay and certain other relief was extended to certain of the Original Petitioners’ partnerships (collectively with the Original Petitioners, “Old Walter Canada”):
 - i) Walter Canadian Coal Partnership;
 - ii) Wolverine Coal Partnership;
 - iii) Brule Coal Partnership; and
 - iv) Willow Creek Coal Partnership.
3. On December 28, 2016, pursuant to Orders of this Honourable Court which were granted on December 7, 2016 and December 21, 2016, as well as bankruptcy and proposal proceedings which were initiated by Old Walter Canada under the *Bankruptcy and Insolvency Act* during December 2016, the CCAA Proceedings in respect of all of the Old Walter Canada entities, except for Cambrian, were terminated and the CCAA Proceedings were continued with respect to Cambrian and the following new entities which were formed and became petitioners in the CCAA Proceedings on December 8, 2016 (the “New Walter Entities” which, collectively with Cambrian, are referred to herein as “Walter Canada”):
 - i) New Walter Energy Canada Holdings, Inc.;
 - ii) New Walter Canadian Coal Corp.;
 - iii) New Brule Coal Corp.;

- iv) New Willow Creek Coal Corp.; and
 - v) New Wolverine Coal Corp. (“**New Wolverine**”).
4. The Monitor has issued twenty-four previous reports (and supplements to certain of those reports) since the Initial Order was granted (collectively, the “**Previous Reports**”). Terms not specifically defined herein shall have the meanings as defined in the Previous Reports or the Plan (as defined herein).
 5. The Monitor maintains a website at www.kpmg.com/ca/walterenergycanada on which copies of the Previous Reports (with the exception of those which are confidential pursuant to certain sealing Orders granted by this Honourable Court), and additional information regarding these CCAA Proceedings can be found.
 6. On July 3, 2018, this Honourable Court granted an Order which sanctioned and approved Walter Canada’s Amended and Restated Plan of Compromise and Arrangement dated June 22, 2018 (the “**Plan**”) pursuant to the provisions of the CCAA.
 7. The Monitor filed its Twenty-Fourth Report (the “**Twenty-Fourth Report**”) on November 14, 2019, in which the Monitor, among other things, provided information regarding distributions made in accordance with the Plan, the orderly wind up of Energybuild Holdings Limited (“**EBH**”) and Energybuild Group Limited (“**EBG**”) (together, the “**Remaining UK Entities**”), the results of the actual cash flow against forecast and presented an updated cash flow forecast.
 8. On November 22, 2019, this Honourable Court granted an Order which, among other things, extended the Stay to February 28, 2020.
 9. The purpose of this Twenty-Fifth Report of the Monitor (the “**Twenty-Fifth Report**”) is to provide this Honourable Court, and Walter Canada’s stakeholders, with information in respect of the following:
 - i) An update on the distribution to former employees of New Wolverine pursuant to the Plan (the “**Employee Distribution**”);
 - ii) An update on the orderly wind up of the Remaining UK Entities;
 - iii) Walter Canada’s actual cash flow results for the 14-week period ended February

- 15, 2020, as compared to the forecast for the 16-week period ending February 29, 2020 (the “**CCAA Cash Flow Forecast**”);
- iv) Walter Canada’s motion returnable February 25, 2020 seeking an order (the “**CCAA Termination Order**”) to, among other things:
- a) Terminate the CCAA Proceedings upon Walter Canada making an assignment in bankruptcy (the “**CCAA Termination Time**”);
 - b) Discharge the Monitor and Walter Canada’s Chief Restructuring Officer (the “**CRO**”) upon the CCAA Termination Time;
 - c) Obtain the releases set out in the proposed CCAA Termination Order;
 - d) Authorize the Monitor to make arrangements in respect of the retention and destruction of the books and records of Walter Canada and pay any costs associated therewith; and
 - e) Directing the Monitor to withhold certain amounts from a distribution from the Deemed Interest Claim Distribution Cash Pool.
- v) A summary of the remaining fees and costs expected to be incurred in relation to the CCAA Proceedings, including certain proposed holdbacks;
- vi) The Monitor’s motion returnable February 25, 2020 seeking an order (the “**Fee Approval Order**”) approving:
- a) The activities of the Monitor during the period from May 1, 2018 to and including January 31, 2020 (the “**Fee Approval Period**”);
 - b) The fees and disbursements of the Monitor and its legal counsel, McMillan LLP (“**McMillan**”) during the Fee Approval Period;
 - c) The estimated professional fees of the Monitor and McMillan up to the termination of the CCAA Proceedings; and
 - d) The estimated professional fees of the Monitor and McMillan in relation to the Monitor’s Post-Discharge Duties (as defined herein); and
- vii) The Monitor’s observations and recommendations with respect to the foregoing.

REPORT RESTRICTIONS AND SCOPE LIMITATIONS

10. In preparing this report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by Old Walter Canada, Walter Canada and/or certain of their respective affiliates, discussions with counsel for Walter Canada, and management and the CRO (collectively, “**Management**”) and information from other public third-party sources (collectively, the “**Information**”). Except as described in this report in respect of the CCAA Cash Flow Forecast:
- i) The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with *Canadian Auditing Standards* pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of the Information; and
 - ii) Some of the information referred to in this report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
11. Future oriented financial information referred to in this report was prepared based on Management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be material.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

DISTRIBUTIONS IN ACCORDANCE WITH THE PLAN

13. The Twenty-Second Report, the Twenty-Third Report and the Twenty-Fourth Report set out the distributions made pursuant to the Plan, following the implementation of the Plan

on April 24, 2019. Since the date of the Twenty-Fourth Report, pursuant to the Plan, the Monitor has made the Employee Distribution in the aggregate amount of \$9.7 million.

Employee Distribution

14. As discussed in the Twenty-Fourth Report, following the implementation of the Plan, in late April 2019, Service Canada began its review of Employment Insurance (“EI”) overpayments to former employees of New Wolverine. This review was required to be completed prior to the Monitor being able to make the Employee Distribution.
15. On December 2, 2019, Service Canada delivered to the Monitor a letter detailing the results of its review process which set out, for each former employee of New Wolverine, the amount of the EI overpayments, to the extent applicable, that was to be deducted by the Monitor from the amount to be distributed to each former employee and remitted to Service Canada by the Monitor.
16. On December 13, 2019, the Monitor made the Employee Distribution, which consisted of the following:
 - i) A distribution to each of the former employees of New Wolverine who were entitled to a distribution pursuant to the Plan, net of any applicable EI overpayments;
 - ii) A distribution to CRG Financial LLC, who was the assignee of certain employee claims, net of any applicable EI overpayments; and
 - iii) A payment to The Receiver General for Canada for EI overpayment amounts deducted from the distributions to employees/assignees.
17. Pursuant to the terms of the Plan, the Employee Distribution was funded by the Affected Creditors’ Distribution Cash Pool.

Distribution to Warrior

18. The only remaining distribution pursuant to the Plan is to Warrior Met Coal, LLC (“Warrior”) in respect of its Deemed Interest Claim. As set out in the Twenty-Fourth Report, the Monitor previously made an interim distribution of \$7.0 million to Warrior in respect of its Deemed Interest Claim.

19. Pursuant to the terms of the Plan, Warrior is entitled to any remaining funds in the Unresolved Claims Reserve, the Administrative Costs Reserve, the Insurance Reserve and the Wind-Down Reserve after the payment of any associated claims, fees and costs from these reserves as well as the funds in the Deemed Interest Claim Distribution Cash Pool.
20. After the settlement of the claim of Kevin James, the balance of the Unresolved Claims Reserve was transferred to the Deemed Interest Claim Distribution Cash Pool such that there are no funds remaining in that reserve. There are currently funds remaining in each of the Administrative Costs Reserve, the Insurance Reserve and the Wind-Down Reserve. There are expected to be further fees and costs that will need to be paid from the Administrative Costs Reserve and Wind-Down Reserve in order to complete the CCAA Proceedings.
21. A summary of the remaining fees and costs expected to be incurred in relation to the CCAA Proceedings, including certain proposed holdbacks, as well as the amount currently estimated to be available for distribution to Warrior is provided further in this Twenty-Fifth Report.

WIND-UP OF THE REMAINING UK ENTITIES

22. Further to the discussion in the Twenty-Fourth Report, Walter Canada and its advisors, with the assistance of the Monitor, have continued to work with a number of professionals in the UK (including tax, insolvency and legal advisors; collectively, the “**UK Advisors**”) to implement the orderly wind up of the Remaining UK Entities. Since the date of the Twenty-Fourth Report, the UK Advisors have:
 - i) Received confirmation from Her Majesty’s Revenue and Customs (“**HMRC**”) that EBG and EBH have been deregistered in respect of Value-added Tax (“**VAT**”);
 - ii) Received formal tax clearance from HMRC’s Enforcement and Insolvency Team confirming that there are no outstanding liabilities in respect of Corporation Tax; and
 - iii) Been advised by HMRC that tax clearance in respect of VAT and Pay as You Earn (“**PAYE**”) will be received.
23. As at the date of this Twenty-Fifth Report, the following substantive steps need to be completed in respect of the wind up of the Remaining UK Entities:

- i) Receipt of a formal tax clearance from HMRC's Enforcement and Insolvency Team confirming that there are no outstanding liabilities in respect of VAT and PAYE; and
- ii) Payment of surplus cash to Warrior in settlement of the debt owing to it from the Remaining UK Entities.

24. The above steps are expected to be completed by the end of February 2020, following which certain administrative formalities of the wind-up process and the dissolution of the Remaining UK Entities will be completed.

ACTUAL RECEIPTS AND DISBURSEMENTS COMPARED TO FORECAST

25. Walter Canada's actual cash receipts and disbursements for the 14-week period ended February 15, 2020 (the "Reporting Period"), as compared with the CCAA Cash Flow Forecast, are summarized in the table below:

Walter Canada Summary of Actual versus Forecast Cash Flow			
For the 14-Week Period from November 10, 2019 to February 15, 2020⁽¹⁾			
Prepared on a Consolidated Basis			
Unaudited (CAD \$000)	Actual	Forecast	Variance
Cash Inflow			
Other Receipts	63	36	27
Total Cash Inflow	63	36	27
Cash Outflow - Operating Disbursements			
Director's Fees	(34)	(33)	(1)
Taxes	(1)	-	(1)
Total Cash Outflows - Operating Disbursements	(35)	(33)	(2)
Cash Outflow - Non-Operating Disbursements			
CRO and Restructuring Advisor Fees	(610)	(575)	(35)
Payment of Proven Claims	(9,702)	(9,702)	-
Total Cash Outflows - Non-Operating Disbursements	(10,312)	(10,277)	(35)
Net Cash Flow	(10,284)	(10,274)	(10)
Cash, beginning of period (November 10, 2019)	12,871	12,871	-
Cash, end of period (February 15, 2020)	2,587	2,597	(10)
Notes:			
1. Readers are cautioned to read the "Report Restrictions and Scope Limitations" section of this report.			

26. During the Reporting Period, there was a \$10,000 net unfavourable cash flow variance as a result of an unfavorable variance in CRO and Restructuring Advisor Fees offset partially by

higher than anticipated interest received on amounts held by the Monitor on behalf of Walter Canada.

TERMINATION OF THE CCAA PROCEEDINGS AND THE DISCHARGE OF THE MONITOR

27. Walter Canada is seeking the CCAA Termination Order from this Honourable Court providing for the termination of the CCAA Proceedings effective upon Walter Canada making an assignment into bankruptcy, and the extension of the Stay up to and including the CCAA Termination Time.
28. The CCAA Termination Order provides for the discharge of the Monitor effective upon the CCAA Termination Time, subject to the Monitor performing certain post-discharge duties (the “**Monitor’s Post-Discharge Duties**”) as follows:
 - i) 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 Plan;
 - ii) Making a distribution to Warrior in respect of its Deemed Interest Claim; and
 - iii) Such incidental and ancillary duties as may be required.
29. The CCAA Termination Order also provides for the discharge of the CRO effective upon the CCAA Termination Time, subject to the CRO performing certain post-discharge duties (the “**CRO’s Post-Discharge Duties**”) in respect of Walter Canada’s proposed bankruptcy proceedings at the request of the Trustee in Bankruptcy.
30. Walter Canada is seeking certain releases in the CCAA Termination Order in favour of, amongst others, Walter Canada, the Monitor, KPMG Inc. and its affiliates, the CRO, and their respective legal counsel. These releases are substantially similar to the releases provided for in the Plan.
31. The additional releases are being sought given the passage of time since the Plan was sanctioned. When the Sanction Order was granted in July 2018, it was expected that the Plan would be implemented within several months of the Sanction Order being granted. However, as outlined in the Previous Reports, certain conditions precedent to Plan implementation took much longer to satisfy than originally anticipated, in particular

obtaining the CRA Letter (as defined in the Twenty-Second Report) which required substantial work by the Monitor and Walter Canada.

32. The CCAA Termination Order authorizes the Monitor to make any arrangements that it deems necessary, in its sole discretion, for the retention and destruction of Walter Canada's books and records following the CCAA Termination Time and to pay any costs associated with such retention and destruction (the "**Records Costs**").
33. The Monitor intends to retain the books and records of Walter Canada in its possession for the prescribed seven year period, following which those records will be destroyed.
34. Pursuant to the CCAA Termination Order, the Monitor is directed to withhold amounts (the "**Holdback Amounts**") on account of the following from a distribution to Warrior from the Deemed Interest Claim Cash Distribution Pool:
 - i) The costs in respect of Walter Canada's proposed bankruptcy proceedings, including the fees of the Trustee in Bankruptcy and its legal counsel and the CRO in relation to the CRO's Post-Discharge Duties (the "**Bankruptcy Costs**");
 - ii) The fees and costs of the Monitor and its legal counsel and advisors in relation to the Monitor's Post-Discharge Duties (the "**Administration Costs**");
 - iii) Uncashed cheques in respect of distributions made pursuant to the Plan (the "**Uncashed Cheques Fund**"); and
 - iv) The Records Costs.

ESTIMATED FEES AND COSTS TO COMPLETE THE CCAA PROCEEDINGS AND HOLDBACK AMOUNTS

35. As discussed earlier in this Twenty-Fifth Report, there will be further fees and costs incurred to complete the remaining matters in the CCAA Proceedings. The table below sets out the amounts currently being held by the Monitor on behalf of Walter Canada, an estimate of the fees and costs to complete the CCAA Proceedings, the proposed Holdback Amounts and the amount expected to be available for distribution to Warrior.

Walter Canada	
Summary of Estimated Fees and Holdback Amounts	
As at February 15, 2020	CAD (\$000)
	Amount
Available Cash	3,486
Estimated Fees and Holdback Amounts	
Estimate of Fees to the CCAA Termination Time	(351)
<i>Holdback Amounts</i>	
Bankruptcy Costs	
Trustee and Trustee's counsel	(75)
CRO	(40)
Administrative Costs	(25)
Uncashed Cheques Fund	(446)
Records Costs	(13)
Total Holdback Amounts	(599)
Total Estimated Fees and Holdback Amounts	(950)
Estimated Funds Available for Distribution to Warrior	2,536

36. As of February 15, 2020, the Monitor was holding approximately \$3.0 million on behalf of Walter Canada. In addition to these funds, there were unused retainer amounts totaling approximately \$452,000 being held by Walter Canada's legal counsel and the Monitor.
37. The fees expected to be incurred up to the CCAA Termination Time include the following:
- i) The fees of Walter Canada's legal counsel incurred from January 1, 2020 to the date of this Twenty-Fifth Report and estimated fees expected to be incurred to the CCAA Termination Time;
 - ii) The fees of the Monitor and its legal counsel incurred from February 1, 2020 to the date of this Twenty-Fifth Report and estimated fees expected to be incurred to the CCAA Termination Time;
 - iii) The fees of the CRO and Walter Canada's sole director for the month of March 2020; and
 - iv) The fees of KPMG Tax in relation to the preparation of Walter Canada's 2019 tax returns.
38. If this Honourable Court grants the CCAA Termination Order, the Monitor intends to

distribute to Warrior promptly thereafter all funds it is holding other than the Holdback Amounts and sufficient funds to pay any estimated fees and disbursements to the completion of the CCAA Proceedings, together with taxes thereon, to the extent that those fees and disbursements have not been paid at the time of the distribution. Following performance of the Monitor's Post-Discharge Duties and the completion of Walter Canada's proposed bankruptcy proceedings, the Monitor will distribute any unused portions of the Holdback Amounts (and any other unused funds in the Monitor's possession) to Warrior.

APPROVAL OF THE MONITOR'S ACTIVITIES AND PROFESSIONAL FEES

39. The Monitor is seeking an order from this Honourable Court approving its activities, as well as its fees and disbursements and those of its legal counsel, McMillan, during the Fee Approval Period. In addition, the Monitor is seeking approval of its expected fees and the expected fees of McMillan from February 1, 2020 to the CCAA Termination Time, as well as the fees of the Monitor and McMillan in relation to the Monitor's Post-Discharge Duties which are included the Administration Costs holdback.
40. In the Previous Reports, the Monitor has generally discussed, in varying degrees of detail, the activities it performed during the Fee Approval Period. The following is a summary of the key activities performed by the Monitor in the CCAA Proceedings during the Fee Approval Period:
- i) Participated in discussions and negotiations with stakeholders and assisted Walter Canada in developing a comprehensive plan of compromise and arrangement;
 - ii) Undertook the activities required to be performed by the Monitor pursuant to the Meeting Order;
 - iii) Supported Walter Canada's motion for the Sanction Order;
 - iv) Assisted Walter Canada in preparing and filing its 2017 and 2018 tax returns and assisted Walter Canada in preparing its 2019 tax returns;
 - v) Assisted Walter Canada in satisfying the conditions precedent to implementation of the Plan, including liaising and working with the Canada Revenue Agency in order to obtain the CRA Letter, which was one of the material conditions precedent to the Plan;

- vi) Liaised and worked with Service Canada in respect of its review of EI benefit overpayments;
 - vii) Following Plan implementation, made the distributions pursuant to the Plan, including the Employee Distribution;
 - viii) Assisted Walter Canada and its advisors and the CRO in developing a plan for and implementing the orderly wind up of the Remaining UK Entities;
 - ix) Performed all cash management functions for Walter Canada, including maintaining bank accounts for each entity and attending to cash receipt, disbursement, banking and investment activities, as well as maintaining accounting records, fulfilling GST/HST filing requirements, and the preparation of annual financial statements;
 - x) Reported to this Honourable Court, as required from time to time, in respect of the foregoing and other matters pertaining to the CCAA Proceedings, including preparing and filing seven Monitor's reports (up to January 31, 2020), and attended at Court hearings in respect of applications made by Walter Canada; and
 - xi) Attended to various other normal and customary matters in connection with these CCAA Proceedings, as required.
41. The Monitor's fees and disbursements during the Fee Approval Period are detailed in the 1st Affidavit of Anamika Gadia to be sworn. During the Fee Approval Period, the Monitor invoiced a total of 1,713.4 hours, representing fees in the amount of \$829,049 and disbursements totaling \$19,474 plus \$110,308 in applicable taxes.
42. In the Monitor's view, all of the services provided and disbursements incurred by the Monitor were necessary and appropriate in the circumstances.
43. The fees and disbursements of the Monitor's legal counsel, McMillan, during the Fee Approval Period are detailed in the 1st Affidavit of Vicki Tickle sworn February 19, 2020. During the Fee Approval Period, McMillan invoiced a total of 493.6 hours, representing fees in the amount of \$330,254 and disbursements totaling \$4,891 plus \$40,202 in applicable taxes.
44. The Monitor has reviewed all accounts rendered by McMillan during the Fee Approval Period and confirms that all of the services set out in those accounts were duly authorized

by and rendered to the Monitor and that they are, in the Monitor's opinion, fair and reasonable.

45. The fees and disbursements of the Monitor and its legal counsel have been reviewed and approved by the CRO throughout the Fee Approval Period. The CRO has advised the Monitor that he is supportive of the Monitor's motion for fee approval and believes that the fees and disbursements of the Monitor and McMillan are fair and reasonable.
46. In addition to the fees incurred during the Fee Approval Period, the Monitor and McMillan expect to incur certain additional fees (including fees and disbursements incurred to date but unbilled) in respect of the CCAA Proceedings for the period from February 1, 2020 to the CCAA Termination Time. These additional fees are not expected to exceed \$70,000 for the Monitor and \$40,000 for McMillan.
47. The CCAA Termination Order provides for the Monitor performing the Monitor's Post-Discharge Duties. An Administration Costs holdback of \$25,000 is being proposed for the potential fees of the Monitor and its legal counsel in relation to the provision of the Monitor's Post-Discharge Duties.

THE MONITOR'S CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

48. In the Monitor's opinion, Walter Canada is continuing to act in good faith and with due diligence to complete the remaining matters in the CCAA Proceedings and bring the CCAA Proceedings to a close.
49. For the reasons set out in this Twenty-Fifth Report, the Monitor respectfully recommends to this Honourable Court that it grant the CCAA Termination Order that is being requested by Walter Canada, as well as the Fee Approval Order being sought by the Monitor approving its activities, as well as its fees and disbursements and those of its legal counsel.

All of which is respectfully submitted this 24th day of February, 2020.

**KPMG INC., in its sole capacity as
Monitor of New Walter Energy Canada Holdings, Inc. et al**



Per: Anamika Gadia
Senior Vice President



George Bourikas
Vice President