

File No. S-1510120 Vancouver Registry

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-THIRD REPORT OF THE MONITOR, KPMG INC.

August 8, 2019

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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".
- 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-two previous reports (and supplements to certain of those reports) since the Initial Order was granted, and those reports are referred to herein, collectively, as the "Previous Reports". Terms not specifically defined herein shall have the meanings as defined in the Previous Reports, the Claims Process Order or the Plan (as subsequently defined).
- 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) as well as 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-Second Report (the "Twenty-Second Report") on April 26, 2019, in which the Monitor, among other things, provided information regarding the implementation of the Plan, the efforts undertaken to wind up Energybuild Holdings Limited, Energybuild Group Limited and Energybuild Opencast Ltd. (collectively, the "Remaining UK Entities"), the progress made in the adjudication of the Claim of Mr. Kevin James (the "James Claim"), the results of the actual cash flow against forecast and presented an updated cash flow forecast.
- 8. On May 1, 2019, this Honourable Court granted an Order which, among other things, extended the Stay to August 16, 2019.
- 9. The purpose of this Twenty-Third Report of the Monitor is to provide this Honourable Court, and Walter Canada's stakeholders, with information with respect to the following:
  - a) An update on the status of the James Claim;
  - b) An update on the distributions made to date pursuant to the Plan and the timing of the distribution to the former employees of New Wolverine Coal Corp. (the "Employee Distribution");

- Walter Canada's actual cash flow results for the 13-week period ended July 27, 2019, as compared to the forecast for the 14-week period ended August 3, 2019 (the "Previous CCAA Cash Flow Forecast"), which was filed with the Twenty-Second Report;
- d) Walter Canada's updated cash flow forecast for the 18-week period ending November 30, 2019 (the "Updated CCAA Cash Flow Forecast");
- e) Certain other matters, including an update on the orderly wind up of the Remaining UK Entities; and
- f) The Monitor's observations and recommendations in respect of Walter Canada's motion returnable August 13, 2019 seeking an Order extending the Stay to November 26, 2019 (the "Extended Stay Period").

#### 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 Previous CCAA Cash Flow Forecast and the Updated CCAA Cash Flow Forecast:
  - a) 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
  - b) 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.

#### THE JAMES CLAIM

- 13. As discussed in the Twenty-Second Report, the adjudication of the James Claim (the only remaining Unresolved Claim) was subject to a litigation schedule approved by this Honourable Court on February 25, 2019. Counsel to the parties continued to hold settlement discussions while adhering to the approved litigation schedule.
- 14. On July 10, 2019, the Monitor was advised that the parties to the James Claim had reached a proposed settlement of \$1 million. The proposed settlement was discussed with counsel to Warrior Met Coal LLC ("Warrior") who consented to the settlement. The Monitor also provided its consent to the settlement.
- 15. On July 18, 2019, this Honourable Court granted an Order approving the settlement of the James Claim. As a result, the James Claim is now considered a Proven Claim and pursuant to the Plan, the Monitor made a \$1 million distribution in respect of the James Claim on July 25, 2019.
- 16. Pursuant to the Plan, following the settlement and payment of the James Claim, the remaining balance of the Unresolved Claims Reserve of \$5.75 million was transferred to the Administrative Costs Reserve.

#### DISTRIBUTIONS IN ACCORDANCE WITH THE PLAN

Distributions to Creditors since April 26, 2019

17. As set out in the Twenty-Second Report, the Plan was implemented on April 24, 2019. As of the date of the Twenty-Second Report, the Monitor had funded the various reserves and

cash pools contemplated by the Plan and made distributions to creditors holding Restructuring and Pre-Commencement Claims totalling \$2.3 million and the CRA in the amount of \$3.1 million in respect of the employee and employer portions of Employment Insurance ("EI"), Canada Pension Plan ("CPP") and income tax remittances.

- 18. Since the date of the Twenty-Second Report, the Monitor has made additional distributions pursuant to the Plan, including the distribution in respect of the James Claim and an approximately \$35.8 million payment on May 2, 2019, consisting of:
  - a) \$22.8 million to Warrior, including \$9.9 million in respect of its Shared Services Claim from the Affected Creditors' Distribution Cash Pool and \$12.9 million from the Deemed Interest Claim Distribution Cash Pool in respect of its Deemed Interest Claim; and
  - b) \$13 million to the 1974 Pension Plan pursuant to the Settlement Term Sheet.
- 19. The Employee Distribution is, as discussed below, expected to occur within the Extended Stay Period and will be paid out of the Affected Creditors' Distribution Cash Pool which will then be extinguished.

# Employee Distribution

- 20. As discussed in the Twenty-Second Report, details supporting the Employee Claims were forwarded to Service Canada on April 24, 2019 to allow for the commencement of its review of EI overpayments. At that time, the Monitor was informed by Service Canada that its review was expected to take approximately eight weeks.
- 21. The Monitor followed up with Service Canada on May 24, 2019 to check on the progress of its review. The Monitor was informed that Service Canada did not expect to meet its initial estimate of the timing of its review. In response, the Monitor requested that Service Canada provide a letter that it could post on its website explaining the delay. Shortly thereafter, Service Canada advised that it could not provide a letter but would increase staffing to meet the initial estimate of completion of June 30, 2019.
- 22. At the end of June, the Monitor was advised that Service Canada was nearing the completion of its review but had approximately 18 employee files that had yet to be processed. An estimate of two to three weeks was given to complete the remaining files.

- On July 16, 2019, the Monitor was advised that counsel to the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-424 (the "USW") had raised concerns with Service Canada in respect of timeframe limitations and the defined date of separation and the subsequent allocation of monies to the year 2014 (year of layoff) versus 2016 (year of termination). Service Canada had performed its calculations of EI overpayments using the year 2014. Counsel to USW presented certain information, including the First Affidavit of William G. Harvey dated December 4, 2015, which suggests Walter Canada intended to recall employees had coal prices and market conditions improved enough to justify the restarting of the mines. Therefore, it was argued that the date of separation should be 2016.
- 24. On July 25, 2019, the Monitor was informed that the concerns of the counsel to the USW had been raised with the senior officers of Service Canada to provide guidance. The Monitor followed up with Service Canada on July 30, 2019 and August 7, 2019 and was advised that a decision may not be forthcoming for several weeks. As a result, the anticipated Employee Distribution has been delayed pending a response from Service Canada. As soon as the required information is received from Service Canada, the Monitor will make the Employee Distribution.
- 25. Upon completion of the Employee Distribution, the distributions pursuant to the Plan will be substantially complete, with the only remaining distribution being to Warrior in respect of the Deemed Interest Claim Distribution Cash Pool which will be funded by any excess cash in the Administrative Costs Reserve, Insurance Reserve and the Wind-Down Reserve. As a result, it is expected that Walter Canada will bring a motion to terminate the proceedings before the end of the Extended Stay Period.

#### ACTUAL RECEIPTS AND DISBURSEMENTS COMPARED TO FORECAST

Walter Canada's actual cash receipts and disbursements for the 13-week period ended July 27, 2019 (the "Reporting Period"), as compared with the Previous CCAA Cash Flow Forecast, are summarized in the table below:

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(343)	(457)	114
35,843)	(35,796)	(4.7
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7,186)	(36,253)	(933
6,326)	(36,209)	(117
6,852	56,852	
(6)	-	(6
0,520	20,643	(123
	6,326) 6,852 (6) 0,520	5,326) (36,209) 5,852 56,852 (6) -

- 27. During the Reporting Period, there was an \$117,000 net unfavourable cash flow variance as a result of the following receipts and disbursements:
  - a) A favorable variance of \$823,000 in other receipts due to the collection of a GST/HST refund in the amount of \$633,000 pertaining to filings related to 2016 and 2017. In addition to the GST/HST refund, an income tax refund in the amount of \$180,000 was received in relation to the fiscal 2018 return for New Walter Canadian Coal Corp. which was filed in May 2019. The timing of the receipt of both of these items was uncertain and as a result, were not included in the Previous Cash Flow Forecast. The remaining variance relates to interest received on balances held by Walter Canada.
  - b) The \$114,000 favourable variance of CRO and Restructuring Advisor fees is a timing difference as certain professional fee invoices have yet to be received by

- the Monitor. As a result, this variance is expected to reverse in the subsequent period.
- c) The \$47,000 unfavorable variance in Distribution to Warrior arose as a result of a difference in foreign exchange rates as contemplated in the forecast compared to the actual rate received on the distribution.
- d) An unfavourable variance of \$1 million relating to the settlement of the James Claim. As the timing and potential settlement of the James Claim was unknown, it was not included in the Previous Cash Flow Forecast.
- As discussed in the Previous Reports, the Monitor's cash reporting excluded two balances in respect of the approximately US\$270,000 that was received upon closing of Walter Canada's previous account network at the Bank of Nova Scotia and the £554,654 held by the Monitor on behalf of Energybuild Holdings Limited ("EBH"). The balances have since been remitted to the trustee in the US bankruptcy proceedings of Walter Canada's parent and the liquidator of the Remaining UK entities, respectively.

#### UPDATED CCAA CASH FLOW FORECAST

29. The Updated CCAA Cash Flow Forecast has been prepared by Walter Canada, with the assistance of the Monitor, on a consolidated basis for the 18-week period ending November 30, 2019 (the "Updated Cash Flow Period") to cover the period through the requested extension of the Stay. A copy of the Updated CCAA Cash Flow Forecast is attached hereto as Schedule "A" and is summarized in the table below:

Walter Canada Summary of the Updated CCAA Cash Flow	Forecast
For the 18-Week Period from July 28, 2019 to November	$30,2019^{(1)}$
Prepared on a Consolidated Basis	
Unaudited (CAD \$000)	
Cash Inflow	
Other Receipts	131
Total Cash Inflow	131
Cash Outflow - Operating Disbursements	
Director's Fees	(44)
Insurance	(78)
Total Cash Outflows - Operating Disbursements	(122)
Cash Outflow - Non-Operating Disbursements	
CRO and Restructuring Advisor Fees	(732)
Payment of Proven Claims	(9,702)
Total Cash Outflows - Non-Operating Disbursements	(10,434)
Net Cash Flow	(10,425)
Cash, beginning of period (July 28, 2019)	20,520
Cash, end of period (November 30, 2019)	10,095
Note 1: Readers are cautioned to read the "Report Restrictions	and Scope
Limitations" section of this report.	

- 30. Net cash outflows during the Updated Cash Flow Period are expected to total approximately \$10.4 million which Walter Canada will fund from its current cash resources on hand, and Walter Canada expects to have approximately \$10.1 million of cash resources remaining at the end of the Updated Cash Flow Period.
- 31. The following is a summary of the components of the Updated CCAA Cash Flow Forecast:
  - a) Other Receipts of \$131,000 consists of interest expected to be earned on Walter Canada's cash holdings;
  - b) Director's fees totalling \$44,000 relate to four payments to Walter Canada's sole director and are due in advance on the first of each month;
  - Walter Canada's current insurance coverage expires on September 30, 2019.
    Costs related to the renewal have been forecast at the same rate as the expiring policy.

The Insurance Reserve was established pursuant to Plan in the amount of \$275,000 for the purpose of purchasing any reasonable "run off" or "tail" insurance for the Directors and Officers of Walter Canada and the payment of any deductibles required in connection with claims made in respect thereof. The insurer has advised that the current policy can be cancelled or rewritten into a multi-year run-off policy at a premium to be determined when required. It is expected that the insurance policy will be converted upon the conclusion of the proceedings. As the timing of the termination of the proceedings is unknown at this time, the amount of the premium in respect of the run-off policy has not been included in the Updated Cash Flow Period.

- d) Payments to Walter Canada's counsel, the Monitor and its counsel, and the CRO are expected to total \$732,000 during the Updated Cash Flow Period and are summarized as follows:
  - The catch up of certain invoices, including the fees of the Monitor from April to June 2019 of approximately \$130,000 and Walter Canada's counsel in respect of the litigation and negotiation of the James Claim in June and July 2019 of approximately \$72,000;
  - The services of Walter Canada's CRO throughout the Updated Cash Flow Period of approximately \$289,000; and
  - The remaining professional fees of approximately \$241,000 relating to the administration of the Employee Distribution and required reporting throughout the Updated Cash Flow Period of Walter Canada's counsel as well as the Monitor and its counsel.
- e) Payments of Proven Claims are expected to total approximately \$9.7 million, and will consist entirely of distributions to former employees of Walter Energy and the related payment to Service Canada, net of the EI, CPP and income tax remittances previously paid to the CRA on April 24, 2019.
- 32. The Updated CCAA Cash Flow Forecast indicates that Walter Canada has the necessary liquidity to fund its expected cash requirements through the requested extension of the

Stay.

#### OTHER MATTERS

- 33. Further to the discussion in the Twenty-Second Report, Walter Canada's legal counsel has been working with a number of professionals in the UK (including tax, insolvency and legal advisors; collectively the "UK Advisors") to implement a plan to perform an orderly wind-up of the Remaining UK Entities.
- 34. On May 14, 2019 Energybuild Opencast Limited was dissolved while Energybuild Group Limited ("EBG") and EBH were placed into voluntary liquidation on June 5, 2019. Various statutory procedures have been completed, including the requisite filings and issuance of notices to creditors.
- 35. The UK Advisors are in the process of completing the corporation tax returns for EBG and EBH for the pre-liquidation period from of July 1, 2018 to the date of filing. In addition, EBG and EBH are seeking to be deregistered in respect of Value-added Tax ("VAT").
- 36. Upon receipt of formal tax clearance from Her Majesty's Revenue and Customs ("HMRC") confirming that there are no outstanding liabilities in respect of VAT and Pay as You Earn, the surplus cash will be paid to Warrior in settlement of the debt owing to it from the Remaining UK Entities.
- 37. The process is expected to be complete by the end of November 2019 but is dependent on the timing of the receipt of tax clearance from HMRC.
- 38. With respect to compliance matters for the Canadian entities, the income tax returns for Walter Canada were filed on May 30, 2019, excluding Cambrian which was filed on July 2, 2019 as a result of its December 31 year-end.

#### THE MONITOR'S CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

- 39. In the Monitor's opinion, Walter Canada is continuing to act in good faith and with due diligence in furthering its restructuring efforts, including performing the distributions pursuant to the Plan and winding-up the Remaining UK Entities.
- 40. Accordingly, the Monitor is of the view that it would be reasonable for this Honourable Court to grant Walter Canada's request for an Order extending the Stay to November 26,

2019 to complete the liquidation of the Remaining UK Entities, allow the Monitor to deal with Service Canada, perform the Employee Distribution and bring a motion to terminate these proceedings during the Extended Stay Period.

All of which is respectfully submitted this 8<sup>th</sup> day of August, 2019.

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

Per:

Anamika Gadia

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Senior Vice President

Mike Clark

Vice President

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# Schedule "A"

# Updated CCAA Cash Flow Forecast for the 18-Week Period Ending November 30, 2019

New Walter Energy Canada Holdings, Inc. et al.

New Walter Energy Canada Holdings, Inc. et al.	c. et al. le 18-W	eek Perioc	i Ending N	ovember 3	,0, 2019 <sup>(1)</sup>											
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(in CAD Sund SI	-													<u>-</u> -		ם יייי
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	Notes	8/3/19 8	/19	8/17/19 8/	8/24/19 8/	8/31/19 9	9/7/19 9,	9/14/19	9/21/19	9/28/19 1	1					
Week Ending																
OPERATING CASH FLOW	_															131
Operating Receipts		;		1		31	•	•	,	:	38			+	331	131
Other Receipts	7	31		,		31	     	•	•		38		•			
Total Operating Receipts		31														
											(11)	٠	٠	•	(11)	(44)
Operating Disbursements		177	·	,	1	(11)	•	•		ı	(17)	,	1	,		(78)
Director's Fees	י מי	(TT)		٠	•		,	•	,	-	(0/)		.	-	(11)	(122)
Insurance	4	,				(11)			•	•	(68)	1			_	_
Total Operating Disbursements		(11)	1			•									_	
											/177/	•	•	<del>-</del>	(221)	(732)
Non-Operating Disbursements		;			,	(300)	ı	,	1	1	(177)				,	(9,702)
CRO and Restructuring Advisor Fees	ī.	(84)	•	ı		1	•	,	ı	,	(9,702)		,		(1707)	(10 434)
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UNAUDITED CASH FLOW FORECAST PREPARED BY MANAGEMENT, MUST BE READ IN CONJUNCTION WITH THE NOTES AND ASSUMPTIONS

New Walter Energy Canada Holdings, Inc. et al ("Walter Canada")

Notes to the Unaudited Updated CCAA Cash Flow Forecast for the 18-Week Period Ending November 30, 2019

Unless otherwise noted, the Updated CCAA Cash Flow Forecast is presented in Canadian Dollars using an exchange rate of US\$1.00/CDN\$1.28 for conversion of any U.S. Dollar amounts.

## 1. Purpose

The Updated CCAA Cash Flow Forecast has been prepared solely for the purpose of reflecting Management's best estimate of the cash flow of Walter Canada during its CCAA proceedings, and readers are cautioned that it may not be appropriate for other purposes.

Receipts

## 2. Other Receipts

Amounts forecast include approximately \$131,000 of interest income which is expected to be earned on Walter Canada's cash holdings.

Operating Disbursements

#### 3. Director's Fees

Fees include monthly compensation costs for Walter Canada's sole director over the course of the forecast period.

#### 4. Insurance

Walter Canada's current insurance coverage expires on September 30, 2019. Costs related to the renewal have been forecast at the same rate as the expiring policy.

Non-Operating Disbursements

#### 5. CRO and Restructuring Advisor Fees

Forecast disbursements for professional fees specific to Walter Canada's restructuring efforts, including the fees and disbursements of Walter Canada's counsel, the Monitor and its counsel and the Chief Restructuring Officer. Anticipated activities in respect of these fees during the forecast period include further dealings with Service Canada and completing the Employee Distribution, supporting the liquidation of the Remaining UK Entities, and preparing for the termination of the Walter Canada CCAA proceedings.

#### 6. Payment of Proven Claims

Payment of Proven Claims are expected to total approximately \$9.7 million, consisting entirely of distributions to former employees of Walter Canada and Service Canada, net of

the Employment Insurance, Canada Pension Plan and income tax remittances paid to the CRA on April 24, 2019.