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 A PLAN OF COMPROMISE OR ARRANGEMENT OF WALTER ENERGY CANADA HOLDINGS, INC. AND THE OTHER PETITIONERS LISTED ON SCHEDULE "A"

PETITIONERS

WALTER CANADA GROUP'S BOOK OF EVIDENCE

(Volume 2)

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 107

Date: 20160126
Docket: S1510120
Registry: Vancouver

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 a Plan of Compromise or Arrangement of Walter Energy Canada Holdings, Inc. and the Other Petitioners Listed on Schedule "A"

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

Counsel for the Petitioners:	Marc Wasserman Mary I.A. Buttery Tijana Gavric Joshua Hurwitz
Counsel for United Mine Workers of America 1974 Pension Plan and Trust:	John Sandrelli Tevia Jeffries
Counsel for Steering Committee of First Lien Creditors of Walter Energy, Inc.:	Matthew Nied
Counsel for Her Majesty the Queen in Right of the Province of British Columbia:	Aaron Welch
Counsel for Morgan Stanley Senior Funding, Inc.:	Kathryn Esaw

Counsel for KPMG Inc., Monitor:	Peter Reardon Wael Rostom Caitlin Fell
Counsel for Canada Revenue Agency:	Neva Beckie
Counsel for the United States Steel Workers, Local 1-424:	Stephanie Drake
Place and Date of Hearing and Ruling given to Parties with Written Reasons to Follow:	Vancouver, B.C. January 5, 2016
Place and Date of Written Reasons:	Vancouver, B.C. January 26, 2016

Introduction and Background

[1] On December 7, 2015, I granted an initial order in favour of the petitioners, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("*CCAA*").

[2] The "Walter Group" is a major exporter of metallurgical coal for the steel industry, with mines and operations in the U.S., Canada and the U.K. The petitioners comprise part of the Canadian arm of the Walter Group and are known as the "Walter Canada Group". The Canadian entities were acquired by the Walter Group only recently in 2011.

[3] The Canadian operations principally include the Brule and Willow Creek coal mines, located near Chetwynd, B.C., and the Wolverine coal mine, near Tumbler Ridge, B.C. The mine operations are conducted through various limited partnerships. The petitioners include the Canadian parent holding company and the general partners of the partnerships. Given the complex corporate structure of the Walter Canada Group, the initial order also included stay provisions relating to the partnerships: *Lehndorff General Partner Ltd. (Re)* (1993), 9 B.L.R. (2d) 275 (Ont. Gen. Div.); *Asset Engineering LP v. Forest & Marine Financial Limited Partnership*, 2009 BCCA 319 at para. 21.

[4] The timing of the Canadian acquisition could not have been worse. Since 2011, the market for metallurgical coal has fallen dramatically. This in turn led to financial difficulties in all three jurisdictions in which the Walter Group operated. The three Canadian mines were placed in care and maintenance between April 2013 and June 2014. The mines remain in this state today, at an estimated annual cost in excess of $16 million. Similarly, the U.K. mines were idled in 2015. In July 2015, the U.S. companies in the Walter Group filed and sought creditor protection by filing a proceeding under Chapter 11 of the U.S. *Bankruptcy Code*. It is my understanding that the U.S. entities have coal mining operations in Alabama and West Virginia.

[5] From the time of the granting of the initial order, it was apparent that the outcome of the U.S. proceedings would have a substantial impact on the Walter

Canada Group. A sales process completed in the U.S. proceeding is anticipated to result in a transfer of the U.S. assets to a stalking horse bidder sometime early this year. This is significant because the U.S. companies have historically supported the Canadian operations with funding and provided essential management services. This is a relevant factor in terms of the proposed relief, as I will discuss below.

[6] The Walter Canada Group faces various significant contingent liabilities. The various entities are liable under a 2011 credit agreement of approximately $22.6 million in undrawn letters of credit for post-mining reclamation obligations. Estimated reclamation costs for all three mines exceed this amount. Further obligations potentially arise with respect to the now laid-off employees of the Wolverine mine, who are represented by the United Steelworkers, Local 1-424 (the "Union"). If these employees are not recalled before April 2016, the Wolverine partnership faces an estimated claim of $11.3 million. As I will discuss below, an even more significant contingent liability has also recently been advanced.

[7] This anticipated "parting of the ways" as between the U.S. and Canadian entities in turn prompted the filing of this proceeding, which is intended to provide the petitioners with time to develop a restructuring plan. The principal goal of that plan, as I will describe below, is to complete a going concern sale of the Canadian operations as soon as possible. Fortunately, as of early December 2015, the Walter Canada Group has slightly in excess of US$40.5 million in cash resources to fund the restructuring efforts. However, ongoing operating costs remain high and are now compounded by the restructuring costs.

[8] As was appropriate, the petitioners did not seek extensive orders on December 7, 2015, given the lack of service on certain major stakeholders. A stay was granted on that date, together with other ancillary relief. KPMG Inc. was appointed as the monitor (the "Monitor").

[9] The petitioners now seek relief that will set them on a path to a potential restructuring; essentially, an equity and/or debt restructuring or alternatively, a sale and liquidation of their assets. That relief includes approving a sale and solicitation

process and the appointment of further professionals to manage that process and complete other necessary management functions. They also seek a key employee retention plan. Finally, the petitioners seek an extension of the stay to early April 2016.

[10] For obvious reasons, the financial and environmental issues associated with the coal mines loom large in this matter. For that reason, the Walter Canada Group has engaged in discussions with the provincial regulators, being the B.C. Ministry of Energy and Mines and the B.C. Ministry of the Environment, concerning the environmental issues and the proposed restructuring plan. No issues arise from the regulators' perspective at this time in terms of the relief on this application. Other stakeholders have responded to the application and contributed to the final terms of the relief sought.

[11] The stakeholders appearing on this application are largely supportive of the relief sought, save for two.

[12] Firstly, the United Mine Workers of America 1974 Pension Plan and Trust (the "1974 Pension Plan") opposes certain aspects of the relief sought as to who should be appointed to conduct the sales process.

[13] The status of the 1974 Pension Plan arises from somewhat unusual circumstances. One of the U.S. entities, Jim Walter Resources, Inc. ("JWR") is a party to a collective bargaining agreement with the 1974 Pension Plan (the "CBA"). In late December 2015, the U.S. bankruptcy court issued a decision that allowed JWR to reject the CBA. The court also ordered that the sale of the U.S. assets would be free and clear of any liabilities under the CBA. As a result, the 1974 Pension Plan has filed a proof of claim in the U.S. proceedings advancing a contingent claim against JWR with respect to a potential "withdrawal liability" under U.S. law of approximately US$900 million. The U.S. law in question is the *Employee Retirement Income Security Act of 1974*, 29 USC § 101, as amended, which is commonly referred to as "*ERISA*".

[14] The 1974 Pension Plan alleges that it is only a matter of time before JWR formally rejects the CBA. In that event, the 1974 Pension Plan contends that *ERISA* provides that all companies under common control with JWR are jointly and severally liable for this withdrawal liability, and that some of the entities in the Walter Canada Group come within this provision.

[15] It is apparent at this time that neither the Walter Canada Group nor the Monitor has had an opportunity to assess the 1974 Pension Plan's contingent claim. No claims process has even been contemplated at this time. Nevertheless, the standing of the 1974 Pension Plan to make submissions on this application is not seriously contested.

[16] Secondly, the Union only opposes an extension of the stay of certain proceedings underway in this court and the Labour Relations Board in relation to some of its employee claims, which it wishes to continue to litigate.

[17] At the conclusion of the hearing, I granted the orders sought by the petitioners, with reasons to follow. Hence, these reasons.

The Sale and Investment Solicitation Process ("SISP")

[18] The proposed SISP has been developed by the Walter Canada Group in consultation with the Monitor. By this process, bidders may submit a letter of intent or bid for a restructuring, recapitalization or other form of reorganization of the business and affairs of the Walter Canada Group as a going concern, or a purchase of any or all equity interests held by Walter Energy Canada. Alternatively, any bid may relate to a purchase of all or substantially all, or any portion of the Walter Canada Group assets (including the Brule, Willow Creek and Wolverine mines).

[19] It is intended that the SISP will be led by a chief restructuring officer (the "CRO"), implemented by a financial advisor (both as discussed below) and supervised by the Monitor.

[20] Approvals of SISPs are a common feature in *CCAA* restructuring proceedings. The Walter Canada Group refers to *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750. At para. 6, Brown J. (as he then was) stated that in reviewing a proposed sale process, the court should consider:

> (i) the fairness, transparency and integrity of the proposed process;
>
> (ii) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,
>
> (iii) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

[21] Although the court in *CCM Master Qualified Fund* was considering a sales process proposed by a receiver, I agree that these factors are also applicable when assessing the reasonableness of a proposed sales process in a *CCAA* proceeding: see *PCAS Patient Care Automation Services Inc. (Re)*, 2012 ONSC 2840 at paras. 17-19.

[22] In this case, the proposed timelines would see a deadline of March 18 for letters of intent, due diligence thereafter with a bid deadline of May 27 and a target closing date of June 30, 2016. In my view, the timeline is reasonable, particularly with regard to the need to move as quickly as possible to preserve cash resources pending a sale or investment; or, in the worst case scenario, to allow the Walter Canada Group to close the mines permanently. There is sufficient flexibility built into the SISP to allow the person conducting it to amend these deadlines if the circumstances justify it.

[23] The SISP proposed here is consistent with similar sales processes approved in other Canadian insolvency proceedings. In addition, I agree with the Monitor's assessment that the SISP represents the best opportunity for the Walter Canada Group to successfully restructure as a going concern, if such an opportunity should arise.

[24] No stakeholder, including the 1974 Pension Plan, opposed this relief. All concerned recognize the need to monetize, if possible, the assets held by the Walter Canada Group. I conclude that the proposed SISP is reasonable and it is approved.

Appointment of Financial Advisor and CRO

[25] The more contentious issues are who should conduct the SISP and manage the operations of the Walter Canada Group pending a transaction and what their compensation should be.

[26] The Walter Canada Group seeks the appointment of a financial advisor and CRO to assist with the implementation of the SISP.

[27] In restructuring proceedings it is not unusual that professionals are engaged to advance the restructuring where the existing management is either unable or unwilling to bring the required expertise to bear. In such circumstances, courts have granted enhanced powers to the monitor; otherwise, the appointment of a CRO and/or financial advisor can be considered.

[28] A consideration of this issue requires some context in terms of the current governance status of the Walter Canada Group. At present, there is only one remaining director, who is based in West Virginia. The petitioners' counsel does not anticipate his long-term involvement in these proceedings and expects he will resign once the U.S. sale completes. Similarly, the petitioners have been largely instructed to date by William Harvey. Mr. Harvey is the executive vice-president and chief financial officer of Walter Energy Canada Holdings, Inc., one of the petitioners. He lives in Birmingham, Alabama. As with the director, the petitioners' counsel expects him to resign in the near future.

[29] The only other high level employee does reside in British Columbia, but his expertise is more toward operational matters, particularly regarding environmental and regulatory issues.

[30] Accordingly, there is a legitimate risk that the Walter Canada Group ship may become rudderless in the midst of these proceedings and most significantly, in the midst of the very important sales and solicitation process. This risk is exacerbated by the fact that the management support traditionally provided by the U.S. entities will not be provided after the sale of the U.S. assets. Significant work must be done to effect a transition of those shared services in order to allow the Canadian operations to continue running smoothly. It is anticipated that the CRO will play a key role in assisting in this transition of the shared services.

[31] In these circumstances, I am satisfied that professional advisors are not just desirable, but indeed necessary, in order to have a chance for a successful restructuring. Both appointments ensure that the SISP will be implemented by professionals who will enhance the likelihood that it generates maximum value for the Walter Canada Group's stakeholders. In addition, the appointment of a CRO will allow the Canadian operations to continue in an orderly fashion, pending a transaction.

[32] The proposal is to retain PJT Partners LP ("PJT") as a financial advisor and investment banker to implement the SISP. PJT is a natural choice given that it had already been retained in the context of the U.S. proceedings to market the Walter Group's assets, which of course indirectly included the Walter Canada Group's assets. As such, PJT is familiar with the assets in this jurisdiction, knowledge that will no doubt be of great assistance in respect of the SISP.

[33] In addition, the proposal is to retain BlueTree Advisors Inc. as the CRO, by which it would provide the services of William E. Aziz. Mr. Aziz is a well-known figure in the Canadian insolvency community; in particular, he is well known for having provided chief restructuring services in other proceedings (see for example *Mobilicity Group (Re)*, 2013 ONSC 6167 at para. 17). No question arises as to his extensive qualifications to fulfil this role.

[34] The materials as to how Mr. Aziz was selected were somewhat thin, which raised some concerns from the 1974 Pension Plan as to the appropriateness of his

involvement. However, after submissions by the petitioners' counsel, I am satisfied that there was a thorough consideration of potential candidates and their particular qualifications to undertake what will no doubt be a time-consuming and complex assignment. In that regard, I accept the recommendations of the petitioners that Mr. Aziz is the most qualified candidate.

[35] The Monitor was involved in the process by which PJT and BlueTree/Mr. Aziz were selected. It has reviewed both proposals and supports that both PJT and BlueTree are necessary appointments that will result in the Walter Canada Group obtaining the necessary expertise to proceed with its restructuring efforts. In that sense, such appointments fulfill the requirements of being "appropriate", in the sense that that expertise will assist the debtor in achieving the objectives of the *CCAA*: see s. 11; *ICR Commercial Real Estate (Regina) Ltd. v. Bricore Land Group Ltd.*, 2007 SKQB 121 at para. 19.

[36] The 1974 Pension Plan does not mount any serious argument against the need for such appointments, other than to note that the costs of these retainers will result in a very expensive process going forward. The matter of PJT and the CRO's compensation was the subject of some negative comment by the 1974 Pension Plan. However, the 1974 Pension Plan did not suggest any alternate way of proceeding with the SISP and the operations generally. When pressed by the Court on the subject, the 1974 Pension Plan acknowledged that time was of the essence in implementing the SISP and it did not contend that a further delay was warranted to canvas other options.

[37] PJT is to receive a monthly work fee of US$100,000, although some savings are achieved since this amount will not be charged until the completion of the U.S. sale. In addition, PJT will receive a capital raising fee based on the different types of financing that might be arranged. Lastly, PJT is entitled to a transaction or success fee, based on the consideration received from any transaction.

[38] At the outset of the application, the proposed compensation for the CRO was similar to that of PJT. The CRO was to obtain a monthly work fee of US$75,000. In

addition, the CRO was to receive a transaction or success fee based on the consideration received from any transaction. After further consideration by the petitioners and BlueTree, this proposed compensation was subsequently renegotiated so as to limit the success fee to $1 million upon the happening of a "triggering event" (essentially, a recapitalization, refinancing, acquisition or sale of assets or liabilities).

[39] To secure the success fees of PJT and the CRO, the Walter Canada Group seeks a charge of up to a maximum of $10 million, with each being secured to a limit of half that amount. Any other fees payable by the Walter Canada Group to PJT and the CRO would be secured by the Administration Charge granted in the initial order.

[40] The jurisdiction to grant charges for such professional fees is found in s. 11.52 of the *CCAA*:

> 11.52(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of
>
> (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
>
> (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
>
> (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

[41] In *U.S. Steel Canada Inc. (Re)*, 2014 ONSC 6145 at para. 22, Justice Wilton-Siegel commented on the necessity of such a charge in a restructuring, as it is usually required to ensure the involvement of these professionals and achieve the best possible outcome for the stakeholders. I concur in that sentiment here, as the involvement of PJT and BlueTree is premised on this charge being granted.

[42] In *Canwest Publishing Inc.*, 2010 ONSC 222 at para. 54, Justice Pepall (as she then was) set out a non-exhaustive list of factors to consider when determining

whether the proposed compensation is appropriate and whether charges should be granted for that compensation:

(a) the size and complexity of the businesses being restructured;

(b) the proposed role of the beneficiaries of the charge;

(c) whether there is an unwarranted duplication of roles;

(d) whether the quantum of the proposed charge appears to be fair and reasonable;

(e) the position of the secured creditors likely to be affected by the charge; and

(f) the position of the Monitor.

[43] I am satisfied that the Walter Canada Group's assets and operations are significantly complex so as to justify both these appointments and the proposed compensation. I have already referred to the significant regulatory and environmental issues that arise. In addition, relevant employment issues are already present. Any transaction relating to these assets and operations will be anything but straightforward.

[44] The factors relating to the proposed role of the professionals and whether there is unwarranted duplication can be addressed at the same time. As conceded by the petitioners' and Monitor's counsel, there will undoubtedly be some duplication with the involvement of the Monitor, PJT and the CRO. However, the issue is whether there is *unwarranted* duplication of effort. I am satisfied that the process has been crafted in a fashion that recognizes the respective roles of these professionals but also allows for a coordinated effort that will assist each of them in achieving their specific goals. Each has a distinct focus and I would expect that their joint enterprise will produce a better result overall.

[45] Any consideration of compensation will inevitably be driven by the particular facts that arise in the proceedings in issue. Even so, I have not been referred to any material that indicates that the proposed compensation and charge in favour of PJT and the CRO are inconsistent with compensation structures and protections approved in other similarly complex insolvency proceedings. In that regard, I accept

the petitioners' submissions that the task ahead justifies both the amount of the fees to be charged and the protections afforded by the charge. In short, I find that the proposed compensation is fair and reasonable in these circumstances.

[46] The secured creditors likely to be affected by the charges for PJT and the CRO's fees have been given notice and do not oppose the relief being sought.

[47] Finally, the Monitor is of the view that the agreed compensation of PJT and the CRO and the charge in their favour are appropriate.

[48] In summary, all circumstances support the relief sought. Accordingly, I conclude that it is appropriate to appoint the CRO and approve the engagement of PJT on the terms sought. In addition, I grant a charge in favour of PJT and the CRO to a maximum of $10 million to secure their compensation beyond the monthly work fees, subject to the Administration Charge, the Director's Charge and the KERP Charge (as discussed below).

Key Employee Retention Plan ("KERP")

[49] The Walter Canada Group also seeks approval of a KERP, for what it describes as a "key" employee needed to maintain the Canadian operations while the SISP is being conducted. In addition, Mr. Harvey states that this employee has specific information which the CRO, PJT and the Monitor will need to draw on during the implementation of the SISP.

[50] The detailed terms of the KERP are contained in a letter attached to Mr. Harvey's affidavit #3 sworn December 31, 2015. In the course of submissions, the Walter Canada Group sought an order to seal this affidavit, on the basis that the affidavit and attached exhibit contained sensitive information, being the identity of the employee and the compensation proposed to be paid to him.

[51] I was satisfied that a sealing order should be granted with respect to this affidavit, based on the potential disclosure of this personal information to the public: see *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at

para. 53; *Sahlin v. The Nature Trust of British Columbia*, 2010 BCCA 516 at para. 6. A sealing order was granted on January 5, 2016.

[52] The proposed KERP must be considered in the context of earlier events. This individual was to receive a retention bonus from the U.S. entities; however, this amount is now not likely to be paid. In addition, just prior to the commencement of these proceedings, this person was given a salary increase to reflect his additional responsibilities, including those arising from the loss of support and the shared services from the U.S. entities. This new salary level has not been disclosed to the court or the stakeholders.

[53] The Walter Canada Group has proposed that this employee be paid a retention bonus on the occurrence of a "triggering event", provided he remains an active employee providing management and other services. The defined triggering events are such that the retention bonus is likely to be paid whatever the outcome might be. In addition, to secure the payment of the KERP to this employee, Walter Energy Canada seeks a charge up to the maximum amount of the retention bonus.

[54] The amount of the retention bonus is large. It has been disclosed in the sealed affidavit but has not been disclosed to certain stakeholders, including the 1974 Pension Plan. The Monitor states in its report:

> The combination of the salary increase and proposed retention bonus ... were designed to replace the retention bonus previously promised to the KERP Participant by Walter Energy U.S.

[55] I did not understand the submissions of the 1974 Pension Plan to be that the granting of a KERP for this employee was inappropriate. Rather, the concern related to the amount of the retention bonus, which is to be considered in the context of the earlier salary raise. At the end of the day, the 1974 Pension Plan was content to leave a consideration of the level of compensation to the Court, given the sealing of the affidavit.

[56] The authority to approve a KERP is found in the courts' general statutory jurisdiction under s. 11 of the *CCAA* to grant relief if "appropriate": see *U.S. Steel Canada* at para. 27.

[57] As noted by the court in *Timminco Ltd. (Re)*, 2012 ONSC 506 at para. 72, KERPs have been approved in numerous insolvency proceedings, particularly where the retention of certain employees was deemed critical to a successful restructuring.

[58] Factors to be considered by the court in approving a KERP will vary from case to case, but some factors will generally be present. See for example, *Grant Forest Products Inc. (Re)* (2009), 57 C.B.R. (5th) 128 (Ont. S.C.J.); and *U.S. Steel Canada* at paras. 28-33.

[59] I will discuss those factors and the relevant evidence on this application, as follows:

a) Is this employee important to the restructuring process?: In its report, the Monitor states that this employee is the most senior remaining executive in the Walter Canada Group, with extensive knowledge of its assets and operations. He was involved in the development of the Wolverine mine and has extensive knowledge of all three mines. He also has strong relationships in the communities in which the mines are located, with the Group's suppliers and with the regulatory authorities. In that sense, this person's expertise will enhance the efforts of the other professionals to be involved, including PJT, the CRO and the Monitor: *U.S. Steel* at para. 28;

b) Does the employee have specialized knowledge that cannot be easily replaced?: I accept that the background and expertise of this employee is such that it would be virtually impossible to replace him if he left the employ of the Walter Canada Group: *U.S. Steel* at para. 29;

c) Will the employee consider other employment options if the KERP is not approved?: There is no evidence here on this point, but I presume

that the KERP is more a prophylactic measure, rather than a reactionary one. In any event, this is but one factor and I would adopt the comments of Justice Newbould in *Grant Forest Products* at paras. 13-15, that a "potential" loss of this person's employment is a factor to be considered;

d) Was the KERP developed through a consultative process involving the Monitor and other professionals?: The Monitor has reviewed the proposed KERP, but does not appear to have been involved in the process. Mr. Harvey confirms the business decision of the Walter Canada Group to raise this employee's salary and propose the KERP. The business judgment of the board and management is entitled to some deference in these circumstances: *Grant Forest Products* at para. 18; *U.S. Steel Canada* at para. 31; and

e) Does the Monitor support the KERP and a charge?: The answer to this question is a resounding "yes". As to the amount, the Monitor notes that the amount of the retention bonus is at the "high end" of other KERP amounts of which it is aware. However, the Monitor supports the KERP amount even in light of the earlier salary increase and after considering the value and type of assets under this person's supervision and the critical nature of his involvement in the restructuring. As this Court's officer, the views of the Monitor are also entitled to considerable deference by this Court: *U.S. Steel* at para. 32.

[60] In summary, the petitioners' counsel described the involvement of this individual in the *CCAA* restructuring process as "essential" or "critical". These sentiments are echoed by the Monitor, who supports the proposed KERP and charge to secure it. The Monitor's report states that this individual's ongoing employment will be "highly beneficial" to the Walter Canada Group's restructuring efforts, and that this employee is "critical" to the care and maintenance operations at

the mines, the transitioning of the shared services from the U.S. and finally, assisting with efforts under the SISP.

[61] What I take from these submissions is that a loss of this person's expertise either now or during the course of the *CCAA* process would be extremely detrimental to the chances of a successful restructuring. In my view, it is more than evident that there is serious risk to the stakeholders if this person does not remain engaged in the process. Such a result would be directly opposed to the objectives of the *CCAA*. I find that such relief is appropriate and therefore, the KERP and charge to secure the KERP are approved.

Cash Collateralization / Intercompany Charge

[62] Pursuant to the initial order, the Walter Canada Group was authorized and directed to cash collateralize all letters of credit secured by the 2011 credit agreement within 15 days of any demand to do so from the administrative agent, Morgan Stanley Senior Funding Inc. ("Morgan Stanley"). This order was made on the basis of representations by the Monitor's counsel that it had obtained a legal opinion that the security held by Morgan Stanley was valid and enforceable against the Walter Canada Group.

[63] On December 9, 2015, Morgan Stanley demanded the cash collateralization of approximately $22.6 million of undrawn letters of credit. On December 21, 2015, Morgan Stanley requested that the Walter Canada Group enter into a cash collateral agreement (the "Cash Collateral Agreement") to formalize these arrangements.

[64] The Walter Canada Group seeks the approval of the Cash Collateral Agreement, which provides for the establishment of a bank account containing the cash collateral and confirms Morgan Stanley's pre-filing first-ranking security interest in the cash in the bank account. The cash collateralization is intended to relate to letters of credit issued on behalf of Brule Coal Partnership, Walter Canadian Coal Partnership, Wolverine Coal Partnership and Willow Creek Coal Partnership. However, only the Brule Coal Partnership has sufficient cash to collateralize all these letters of credit.

[65] Accordingly, the Walter Canada Group seeks an intercompany charge in favour of Brule Coal Partnership, and any member of the Walter Canada Group, to the extent that a member of the Walter Canada Group makes any payment or incurs or discharges any obligation on behalf of any other member of the Walter Canada Group in respect of obligations under the letters of credit. The intercompany charge is proposed to rank behind all of the other court-ordered charges granted in these proceedings, including the charges for PJT and the CRO and the KERP.

[66] No objection is raised in respect of this relief. The Monitor is of the view that the intercompany charge is appropriate.

[67] In my view, this relief is simply a formalization of the earlier authorization regarding the trusting up of these contingent obligations. On that basis, I approve the Cash Collateral Agreement. I also approve the intercompany charge in favour of the Brule Coal Partnership, on the basis that it is necessary to preserve the *status quo* as between the various members of the Walter Canada Group who will potentially benefit from the use of this Partnership's funds. Such a charge will, as stated by the Monitor, protect the interests of creditors as against the individual entities within the Walter Canada Group.

Stay Extension

[68] In order to implement the SISP, and further its restructuring efforts in general, the Walter Canada Group is seeking an extension of the stay and other relief granted in the initial order until April 5, 2016.

[69] Section 11.02(2) and (3) of the *CCAA* authorizes the court to make an order extending a stay of proceedings granted in the initial application. In this case, the evidence, together with the conclusions of the Monitor, support that an extension is appropriate and that the petitioners are acting in good faith and with due diligence. No stakeholder has suggested otherwise.

[70] As noted above, it is anticipated that the Walter Canada Group will have sufficient liquidity to continue operating throughout the requested stay period.

[71] Further, as the Phase 1 deadline in the SISP is March 18 2016, an extension of the stay until April 5, 2016 will provide sufficient time for PJT to solicit, and the CRO (in consultation with the Monitor and PJT) to consider, any letters of intent. At that time, the process may continue to Phase 2 of the SISP, if the CRO, in consultation with the Monitor and PJT, deems it advisable. In any event, at the time of the next court date, there will be a formal update to the court and the stakeholders on the progress under the SISP.

[72] The only issue relating to the extension of the stay arises from the submissions of the Union, who represents the employees at the Wolverine mine owned and operated by the Wolverine Coal Partnership ("Wolverine LP"). The Union wishes to continue with certain outstanding legal proceedings outstanding against Wolverine LP, as follows:

a) In June 2015, the B.C. Labour Relations Board (the "Board") found that Wolverine LP was in breach of s. 54 of the *Labour Relations Code,* R.S.B.C. 1996, c. 224 (the "*Code*"). The Board ordered Wolverine LP to pay $771,378.70 into trust by way of remedy. This was estimated to be the amount of damages owed by Wolverine LP, but the Union took the position that further amounts are owed. In any event, this amount was paid and is currently held in trust;

b) In November 2015, Wolverine LP filed a proceeding in this court seeking a judicial review of the Board's decision on the s. 54 issue. As a result, the final determination of the damages arising from the *Code* breach has not yet occurred and may never occur if Wolverine LP succeeds in its judicial review; and

c) Following layoffs in April 2014, the Union claimed that a "northern allowance" was payable by Wolverine LP to the employees, including those on layoff. This claim was rejected at arbitration, and upheld on review at the Board. In February 2015, the Union filed a proceeding in this court seeking a judicial review of the Board's decision.

[73] The Union's counsel has referred me to my earlier decision in *Yukon Zinc Corporation (Re)*, 2015 BCSC 1961. There, I summarized the principles that govern applications by a creditor to lift the stay of proceedings to litigate claims:

> [26] There is also no controversy concerning the principles which govern applications by creditors under the *CCAA* to lift the stay of proceedings to litigate claims in other courts or forums, other than by the procedures in place in the restructuring proceedings:
>
> a) the lifting of the stay is discretionary: *Canwest Global Communications Corp.*, 2011 ONSC 2215, at paras. 19, 27;
>
> b) there are no statutory guidelines and the applicant faces a "very heavy onus" in making such an application: *Canwest Global Communications Corp. (Re)* (2009), 61 C.B.R. (5th) 200, at para. 32, 183 A.C.W.S. (3d) (Ont. S.C.J.) ("*Canwest* (2009)"), as applied in *Azure Dynamics Corporation (Re)*, 2012 BCSC 781, at para. 5 and *505396 B.C. Ltd. (Re)*, 2013 BCSC 1580, at para. 19;
>
> c) there are no set circumstances where a stay will or will not be lifted, although examples of situations where the courts have lifted stay orders are set out in *Canwest* (2009) at para. 33;
>
> d) relevant factors will include the status of the *CCAA* proceedings and what impact the lifting of the stay will have on the proceedings. The court may consider whether there are sound reasons for doing so consistent with the objectives of the *CCAA*, including a consideration of the relative prejudice to parties and, where relevant, the merits of the proposed action: *Canwest* (2009) at para. 32;
>
> e) particularly where the issue is one which is engaged by a claims process in place, it must be remembered that one of the objectives of the *CCAA* is to promote a streamlined process to determine claims that reduces expense and delay; and
>
> f) as an overarching consideration, the court must consider whether it is in the interests of justice to lift the stay: *Canwest* (2009); *Azure Dynamics* at para. 28.

[74] I concluded that the Union had not met the "heavy onus" on it to justify the lifting of the stay to allow these various proceedings to continue. My specific reasons are:

a) The Union argues that the materials are essentially already assembled and that these judicial reviews can be scheduled for short chambers matters. As such, the Union argues that there is "minimal prejudice" to Wolverine LP. While this may be so, proceeding with these matters will

inevitably detract both managerial and legal focus from the primary task at hand, namely to implement the SISP, and as such, potentially interfere with the restructuring efforts;

b) The Union argues that any purchaser of Wolverine LP's mine will inherit outstanding employee obligations pursuant to the *Code*. Accordingly, the Union argues that it will be more attractive to a buyer for the mine to have all outstanding employee claims resolved. Again, while this may come to pass, such an argument presupposes an outcome that is anything less than clear at this time. Such a rationale is clearly premature;

c) The Union argues that it is unable to distribute the $771,378.70 to its members until Wolverine LP's judicial review is addressed. Frankly, I see this delay as the only real prejudice to the Union members. However, on the other hand, one might argue that the Union members are in a favourable position with these monies being held in trust as opposed to being unsecured creditors of Wolverine. In any event, the Union's claim to these monies has not yet been determined and arises from a dispute that dates back to April 2014. Therefore, there is no settled liability that would allow such payment to be made; and

d) The Union claims that these matters must be determined "in any event" and that they should be determined "sooner rather than later". However, the outcome of the SISP may significantly affect what recovery any creditor may hope to achieve in this restructuring. In the happy circumstance where there will be monies to distribute, I expect that a claims process will be implemented to determine valid claims, not only in respect of the Union's claims, but all creditors.

[75] In summary, there is nothing to elevate the Union's claims such that it is imperative that they be determined now. There is nothing to justify the distraction and expense of proceeding with these actions to the detriment of the restructuring

efforts. If it should come to pass that monies will be distributed to creditors, such as the Union, then I expect that the usual claims process will be implemented to decide the validity of those claims.

[76] In the meantime, if it becomes necessary to determine the validity of these claims quickly (such as to clarify potential successor claims for a purchaser), the Union will be at liberty to renew its application to lift the stay for that purpose.

[77] Accordingly, I grant an extension of the stay of proceedings and other ancillary relief until April 5, 2016.

"Fitzpatrick J."

TAB 8

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Walter Energy Canada Holdings, Inc. (Re),* 2016 BCSC 1746

Date: 20160923
Docket: S1510120
Registry: Vancouver

***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 a Plan of Compromise or Arrangement of Walter Energy Canada Holdings, Inc. and the Other Petitioners Listed on Schedule "A"

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

In Chambers

Counsel for the Petitioners:	Marc Wasserman Mary I.A. Buttery Patrick Riesterer Lance Williams
Counsel for United Mine Workers of America 1974 Pension Plan and Trust:	John Sandrelli Tevia Jeffries
Counsel for the United Steelworkers, Local 1-424:	Craig D. Bavis Stephanie Drake
Counsel for Her Majesty the Queen in Right of the Province of British Columbia:	Aaron Welch

Counsel for Morgan Stanley Senior Funding, Inc.:	Kathryn Esaw Angela Crimeni
Counsel for KPMG Inc., Monitor:	Peter J. Reardon Wael Rostom
Counsel for Pine Valley Mining Corporation:	Kieran Siddall
Counsel for Kevin James:	Heather Jones
Counsel for Conuma Coal Resources Limited:	David Wachowich Leanne Krawchuk
Place and Date of Hearing:	Vancouver, B.C. August 15-16, 2016
Ruling Given to Parties with Written Reasons to Follow	Vancouver, B.C. August 16, 2016
Place and Date of Written Reasons:	Vancouver, B.C. September 23, 2016

[1] **THE COURT:** These are proceedings brought by the petitioners pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "*CCAA*").

[2] The background of this matter is outlined in my earlier decisions, indexed as *Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 107 and *Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 1413. I will not repeat the details in these reasons.

[3] In brief, the petitioners operate a number of significant mining properties in northeast British Columbia, all of which have been idle since early 2014. I granted an initial order in favour of the petitioners on December 7, 2015. In January 2016, I approved a sales and investment solicitation process ("SISP"), and appointed William Aziz as the chief restructuring officer ("CRO"). Finally, I approved the retainer of PJT Partners LP ("PJT"), to facilitate the sales process. In conjunction with the SISP, parallel efforts were also to be made by the CRO, with the assistance of the Monitor, to explore liquidation scenarios.

[4] There are a number of applications before me. The principal application is to approve a transaction which will see a going-concern sale of the mining properties of the petitioners to Conuma Coal Resources Limited ("Conuma"). Other applications of the petitioners that follow from the disposition of that application include an extension of the stay, approval of a claims process, and the granting of enhanced powers to the Monitor to allow matters to proceed smoothly after a conclusion of the sale to Conuma.

CONUMA SALE APPROVAL

The Evidence

[5] There are extensive materials before the Court relating to the proposed sale by the petitioners to Conuma in accordance with the asset purchase agreement dated August 8, 2016 (the "APA"). These include Mr. Aziz's affidavit #3 sworn August 9, 2016 and the Monitor's Fourth Report dated August 11, 2016.

[6] No stakeholder objects to the Conuma transaction, save for Kevin James. Mr. James is a party to a royalty agreement relating to coal licenses connected to the Wolverine mine of the petitioners.

[7] Before I address the specifics of the proposed transaction, it is important to note that financial details of the Conuma offer are confidential. A redacted form of the APA was circulated to the service list. Nevertheless, fulsome materials are before the Court in the form of Mr. Aziz's affidavit #4, sworn August 9, 2016, which attaches the un-redacted APA and PJT's report dated August 8, 2016 on the proposed sale. In addition, the Monitor's Supplementary Report to the Fourth Report dated August 11, 2016 also provides a confidential detailed financial analysis of the Conuma offer.

[8] As a preliminary matter, the petitioners and the Monitor sought to seal Mr. Aziz's affidavit #4 and the Monitor's Supplementary Report to the Fourth Report.

[9] Having heard submissions, I was satisfied that disclosure of the sensitive financial terms of the bids received as a result of the SISP, including that of Conuma, would pose a serious risk to the commercial interests of the stakeholders, particularly if the Conuma sale did not proceed. This conclusion also applied in relation to the detailed disclosure by the Monitor in its Supplementary Report as to the liquidation bids that had been received and how those bids compared to the recovery arising under the Conuma offer. Finally, I was satisfied that the salutary effects of the sealing order outweighed any prejudice to the stakeholders, given my conclusion that all stakeholders were able to fully consider the matter, given the clear statements of the Monitor as to benefits of the Conuma offer, as I will discuss below. See *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 and *Sahlin v. Nature Trust of British Columbia, Inc.*, 2010 BCCA 516.

[10] Accordingly, on August 15, 2016, I granted a sealing order in relation to Mr. Aziz's affidavit #4 and the Monitor's Supplementary Report to the Fourth Report.

The APA

[11] Not surprisingly, the APA is a comprehensive document addressing a myriad of issues that arise in the anticipated complex sale and purchase transaction relating to the petitioners' assets. I do not intend to address all terms of the transaction; I will highlight the most important aspects of the APA.

[12] The purchased assets relate to the three major mining properties owned by the petitioners, being the Brule, Willow Creek and Wolverine coal mines. The specific assets include certain real property, mineral tenures, buildings, equipment, current assets, water rights, intellectual property and cash collateral currently held by the secured creditor to secure certain letters of credit. Certain "Assigned Contracts" are to be assigned to Conuma and, if required, the petitioners will seek consent to such assignments from the counterparties. If any consent is not obtained, it is anticipated that the court may be asked to address any issues that arise.

[13] There are complex provisions in the APA in relation to the transfer of assets to Conuma. Pending Conuma obtaining the necessary permits and other government approvals to operate the coal mines, Conuma is to be granted the right to conduct mining operations under a contract mining agreement. Conuma is to provide an indemnity in respect of such operations that will be secured against the real property by a court-ordered charge.

[14] The "Assigned Contracts" include the petitioners' interest in Belcourt Saxon Limited Partnership ("BSLP"). The petitioners have the option of requiring Conuma to purchase their interest in BSLP. Both parties to the APA anticipate that there will be further negotiations between Conuma and the other joint venture partner, Peace River Coal Limited Partnership ("Peace River"), given that Peace River holds a right of first refusal and certain "tag-along" rights. Also, there are royalty agreements relating to the coal properties operated by BSLP, including an agreement with Pine Valley Mining Corporation ("PVM"). No specific issues arise in relation to these royalty agreements at this time. The petitioners and PVM have agreed that PVM has

reserved its rights in relation to its royalty agreement pending anticipated negotiations between PVM and Conuma.

[15] Assets which are not part of the APA include cash on hand and the interests of the petitioners in the U.K. Finally, there are certain "Excluded Contracts" which are not being assumed by Conuma. One of these is a royalty agreement with Mr. James relating to the Wolverine mine, which I will discuss in more detail below.

Relevant Factors

[16] I will discuss the Conuma offer in the context of the factors set out in the *CCAA*, s. 36(3):

> Factors to be considered
>
> In deciding whether to grant the authorization, the court is to consider, among other things,
>
> (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> (b) whether the monitor approved the process leading to the proposed sale or disposition;
>
> (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> (d) the extent to which the creditors were consulted;
>
> (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[17] There are no issues arising from the process by which the bids were received under the SISP. As detailed in my earlier reasons, the SISP was a comprehensive process and substantial steps in Phase 1 were taken to invite non-binding letters of intent and allow potential purchasers to assess the assets. Phase 2 of the SISP began in March 2016, by which qualified bids were to be received by June. Bids were received by the later deadline of July 21, 2016.

[18] There has been substantial professional assistance in the conduct of the SISP, as provided by the CRO and PJT, with additional input and oversight by the

Monitor. The Monitor raises no issue with the process, noting that it has "been run as designed." The Monitor also confirms that the APA was rigorously negotiated between the petitioners and Conuma. By all accounts, the Monitor has been extensively involved throughout the SISP process leading to the Conuma bid being received and successfully negotiated.

[19] Both the CRO and the Monitor set out the reasons why the Conuma bid was selected:

a) the overall purchase price was the highest offer arising from the SISP;

b) the bid will produce higher value or net cash proceeds for the stakeholders than any other bid;

c) a substantial deposit of 10% of the purchase price has been received;

d) the bid will result in Conuma assuming substantial liabilities that would otherwise be borne by the estate, including reclamation obligations relating to the mines and obligations under the Assigned Contracts. In addition, current employees will be hired by Conuma, and Conuma is to assume the employment obligations relating to the re-hired employees. Finally, Conuma has agreed that it will be a successor employer in accordance with the relevant legislation and bound by the existing collective bargaining agreement;

e) Conuma has agreed to honour the petitioners' commitments to First Nations groups;

f) there will be substantial other benefits to the larger stakeholder group, given Conuma's stated intention to resume operations at certain of the mines in the future. Conuma is to assume the environmental stewardship of the mine properties which, understandably, has been of some concern to the environmental regulators as a result of the insolvency of the petitioners. In the event of a start-up of the mine(s), suppliers and

customers of the mine properties will be positively impacted. Local communities, including First Nation groups, will also see benefits from a recommencement of mining operations;

g) Conuma is a B.C. limited liability corporation created for this transaction; however, other corporations related to Conuma have provided guarantees for Conuma's obligations under the APA, including the indemnity under the contract mining agreement; and

h) the bid provides for a fairly short period before completion which is required to occur no later than September 15, 2016.

[20] In addition, the Monitor has done an extensive analysis of the Conuma bid in relation to the liquidation bids. The Conuma bid will realize a greater return than any liquidation scenario, principally arising from the greater holding costs in conducting a liquidation of the assets and the additional claims that would be advanced against the estate in that scenario.

[21] Having reviewed the matter, I unreservedly agree with the CRO and the Monitor that the Conuma transaction is the best transaction in the circumstances for the benefit of the petitioners and their stakeholders as a whole.

[22] It is also apparent that the petitioners have broadly consulted with the creditors or potential creditors. The Monitor reports that consultation has taken place with the United Steelworkers, Local 1-424 (the "Union"), and the United Mine Workers of America 1974 Pension Plan and Trust (the "1974 Pension Plan"), both of whom advance substantial claims against the petitioners. In addition, discussions have taken place with certain regulators, key suppliers, and some counter-parties to key contracts.

[23] In summary, leaving aside the issues raised by Mr. James on this application, in my view, it is manifestly the case that the Conuma transaction is the best attainable in the circumstances and represents the best alternative available to the

stakeholders as a whole. I find that the consideration under the APA is fair and reasonable.

MR. JAMES' ROYALTY RIGHTS

[24] As stated above, the only opposition to the approval of the Conuma transaction is advanced by Mr. James. He takes the position that his royalty rights run with the land, such that the petitioners may not transfer the Wolverine coal licenses to Conuma without regard for those rights. Mr. James further says that any approval and vesting order relating to the Wolverine coal licenses cannot result in an extinguishment of his rights.

[25] During the hearing, Mr. James' counsel sought certain amendments to the draft approval and vesting order, including a declaration that Mr. James had an interest in the Wolverine coal properties, and that such interest took priority over the petitioners' interest in those properties. Other suggested wording was to the effect that the vesting of such properties in Conuma would be subject to his royalty interest.

[26] Mr. James also advances procedural arguments in opposition to approval of the Conuma transaction.

[27] The petitioners dispute that Mr. James holds an interest in land (i.e. the Wolverine coal licenses). They say that his interest is only a contractual one, being the right to receive certain monies in the event of production and sale of coal by the petitioners arising from the Wolverine coal licenses.

[28] Both the petitioners and Mr. James wish to decide the royalty issue at this time, given the need to determine whether the Conuma transaction will proceed, or not.

Background Facts

[29] Mr. James is a geologist and was a founding member, officer, and director of Western Canadian Coal Corporation ("WCC"). David Fawcett was another director of WCC.

[30] In the late 1990s, Mr. James and Mr. Fawcett identified certain coal licenses, which were eventually acquired in Mr. James' name. Some licenses (Burnt River/Brule) were sold to WCC after payment by WCC of Mr. James' out-of-pocket expenses; with respect to others (West Brazion), WCC did not have the funds to obtain the licenses, so Mr. James and Mr. Fawcett paid to acquire them. They then granted WCC an option to purchase the licenses in exchange for payment of out-of-pocket expenses and a 1% royalty on coal produced from those properties.

[31] In 1999, Mr. James and Mr. Fawcett identified further promising coal properties in the Wolverine area. Again, WCC lacked the funds to purchase them. A transaction was then structured such that Mr. James and Mr. Fawcett gave up their royalty interest in West Brazion if WCC exercised an option to acquire the Wolverine licenses. In consideration, WCC agreed to pay a 1% royalty on the West Brazion and Wolverine properties to be shared by Mr. James, Mr. Fawcett and another WCC investor, Mark Gibson.

[32] This agreement resulted in the execution of a royalty sharing agreement on March 31, 2000 (the "RSA"), by WCC (the "Company"), and Mr. James, Mr. Fawcett and Mr. Gibson (the "Investors"). In clause 1 of the RSA, the Investors confirm that they have advanced funds to WCC for the "Properties" (defined below), totalling $80,000, with Mr. James having advanced $17,500.

[33] The salient terms of the RSA are as follows:

> **WHEREAS:**
>
> A. The Company has made application for and expects to become the beneficial owner of a 100% interest in and to certain coal interests in the West Brazion, Burnt River, Wolverine and Mount Spieker properties... (the "Properties").

B. Each of the Investors have assisted the Company in acquiring and maintaining the Properties;

C. The Company wishes to pay a royalty to the Investors for the Investors' contributions on the terms and conditions herein contained.

THIS AGREEMENT WITNESSES THAT in consideration of the payment by the Purchaser to the vendors of $1.00 and other good and valuable consideration, receipt of which is hereby acknowledged, the parties mutually covenant and agree as follows:

...

2. CONSIDERATION

2.1 As consideration for advancing the funds, the Company will pay a royalty (the Royalty") of one percent (1%) of the price bracket (FOBT at Port) for all product tonnes produced from the West Brazion, Mount Spieker and Wolverine coal properties on a quarterly basis to the Investors as set out in Schedule "2.1"... [Mr. James - 21.9%; Mr. Fawcett - 40.6%; Mr. Gibson - 37.5%]

3. THE COMPANY'S REPRESENTATIONS AND WARRANTIES

3.1 The Company represents and warrants to and covenants with the Investors as follows:

...

(c) the Company is or will be the beneficial owner of all of the coal licenses comprising the Properties (the "Coal Licenses"), free and clear of all liens, charges and claims of others and no taxes or rentals are or will be due in respect of any thereof;

...

4. COAL LICENSES

4.1 Upon the Coal Licenses being granted and recorded under it in the Company's name, the Company will maintain the Coal Licenses in good standing with the mining recorder, or such other entity with jurisdiction over such matters.

4.2 In the event that any of the Coal Licenses comprising the Properties are not granted or the Company decides to cancel any applications prior to the Coal Licenses being granted, the Investors will be repaid proportionately immediately upon the funds being returned by the government.

4.3 Any forfeiture of the Coal Licenses shall be by mutual consent of the Parties to this Agreement, and such consent shall not be unreasonably withheld. In the event that the Company forfeits the Coal Licenses, the Company will assign the Coal Licenses to the Investors for a minimum period of 30 days prior to the date the forfeiture is to become effective.

...

8. ASSIGNMENT

8.1 This agreement may not be assigned without the written consent of all the parties, which consent shall not be unreasonably withheld.

> **9. GENERAL**
>
> 9.1 This Agreement will enure to the benefit of and be binding upon the parties and their respective successors, heirs, executives, administrators and permitted assigns.

[34] The RSA confirms, in clause 6, that the funds for the Burnt River property had been repaid, but that all of the other funds advanced by the Investors for the other Properties would be repaid within two years.

[35] The RSA was prepared by WCC's corporate counsel, clearly upon the instructions of the directors, which included Mr. James. Mr. Fawcett was one of the authorized signatories signing on behalf of WCC.

[36] The above background facts are a summary of the important facts set out in Mr. James' affidavit filed in support of his position. A more detailed review of the circumstances leading to the execution of the RSA has been set out in various court decisions, as I will now describe.

[37] In 2006, WCC launched a court proceeding attacking the validity of the RSA. This proceeding addressed WCC's argument that there was lack of corporate compliance in the execution of the RSA by WCC under the relevant legislation. WCC's petition was dismissed by this Court: *Western Canadian Coal Corp. v. Fawcett*, 2006 BCSC 463.

[38] In March 2007, WCC suspended payments under the RSA on the basis that the royalty payments under the RSA constituted "interest" within the meaning of s. 347 of the *Criminal Code*, R.S.C. 1985, c. C-46, such that it would result in the Investors receiving a criminal interest rate. As a result, Mr. Fawcett brought a proceeding before this Court in 2009 seeking a declaration that the royalty under the RSA did not offend the *Criminal Code* provision. Mr. James' counsel appeared at the hearing and supported Mr. Fawcett.

[39] In *Fawcett v. Western Canadian Coal Corp.*, 2009 BCSC 446 [*Fawcett 2009*], Pearlman J. considered the criminal interest rate issue. In deciding the interpretation issue arising from the RSA, he considered the terms of the RSA as a whole and also

the relevant factual matrix surrounding the execution of the RSA (para. 80). Both of these interpretation approaches are equally relevant now in relation to a determination of the nature of the rights acquired by Mr. James under the RSA.

[40] Justice Pearlman's comments on the substance of the RSA provisions are also relevant:

> [104] ... In essence, [WCC], in consideration for its acquisition of the interests of Messrs. Fawcett and James in West Brazion, agreed to pay the royalty and to reimburse those Investors for the application costs they had previously incurred.
>
> ...
>
> [108] By paragraph 9.4, the parties agreed that the terms and provisions of the RSA constituted their entire agreement and superseded all previous oral or written communications. Upon entering into the RSA, the Investors relinquished any rights they each had with respect to particular coal properties in exchange for their shared interest in the royalty payable under the RSA.
>
> ...
>
> [125] ... In substance, the RSA was an agreement by which the Investors assisted [WCC] in acquiring potentially valuable coal licenses in consideration for a shared royalty interest in those licenses. The royalty was not in substance a cost paid by [WCC] in order to receive credit. Rather, the royalty was the principal consideration flowing from [WCC] to the Investors for their contributions to [WCC]'s acquisition of the coal licenses. ...
>
> [Emphasis added]

[41] In *Fawcett v. Western Canadian Coal Corp.*, 2010 BCCA 70 [*Fawcett 2010*], Pearlman J.'s decision was largely upheld, in that only a portion of Mr. Fawcett's share of the royalty was found to be a criminal rate of interest. Mr. James' share of the royalty was not affected by the ruling: see paras. 47-48.

[42] On April 1, 2011, one of the petitioners, Walter Energy Canada Holdings, Inc. ("Walter Energy"), the general partner of Walter Canadian Coal Partnership, acquired all of the outstanding common shares of WCC. As such, it is acknowledged that Walter Energy is a successor to WCC as contemplated by clause 9.1 of the RSA.

[43] Until the Wolverine mine became idle in May 2014, Walter Energy paid royalties to Mr. James in accordance with the RSA arising from coal production from that mine.

[44] Despite these previous proceedings and court decisions, it is common ground that there has not been a determination as to the proper characterization of Mr. James' rights to the royalty under the RSA; specifically, there has not yet been a determination as to whether Mr. James holds an interest that runs with the Wolverine coal licenses that must be recognized in a transfer of those licenses by Walter Energy, such as to Conuma.

[45] At some point, Mr. Gibson sold his royalty rights under the RSA back to WCC. As present, Mr. James and Mr. Fawcett continue to retain rights under the RSA as to a 0.219% and 0.15% royalty respectively (total 0.369%).

[46] In April 2016, Mr. James' counsel notified petitioners' counsel of her view that the royalty due to Mr. James under the RSA "runs with the land", and should be part of any purchase and sale of the coal properties. Petitioners' counsel responded that it was yet undetermined how the RSA would be treated in the *CCAA* proceedings and, also, it was yet unknown how any potential purchaser would wish to deal with the matter.

[47] The application materials to approve the Conuma transaction were filed on August 11, 2016, and delivered to parties on the service list, including Mr. James. Mr. Aziz's affidavit and the Monitor's Fourth Report both confirmed that a "royalty agreement related to the Wolverine mine is not being assumed" by Conuma and that it is an "Excluded Liability". Everyone, including Mr. James, understands that this refers to the RSA. Petitioners' counsel anticipates that the RSA will be disclaimed by Walter Energy in the future, and any claims arising will be addressed in the claims process.

Discussion

[48] Walter Energy and Mr. James agree that the royalty due under the RSA is a "gross overriding royalty", in that the royalty amount is not tied to any profitability arising from mine production. In *Bank of Montreal v. Dynex Petroleum Ltd.*, 2002 SCC 7 at para. 2, the Court described this as a "royalty granted normally by the owner of a working interest to a third party in exchange for consideration which could include, but is not limited to, money or services ..."

[49] The Court in *Dynex* also confirmed earlier Canadian authorities to the effect that such a royalty interest *can be* an interest in land. Quoting *Vandergrift v. Coseka Resources Ltd.*, (1989), 67 Alta L.R. (2d) 17 (Q.B.) at 26, the Court, affirmed that:

> [22] ...it appears reasonably clear that under Canadian law a "royalty interest" or an "overriding royalty interest" can be an interest in land if:
>
> 1) the language used in describing the interest is sufficiently precise to show that the parties intended the royalty to be a grant of an interest in land, rather than a contractual right to a portion of the oil and gas substances recovered from the land; and
>
> 2) the interest, out of which the royalty is carved, is itself an interest in land.

[50] Walter Energy agrees that the requirement in item 2 is met, in that its interests in the Wolverine coal licenses are themselves interests in land.

[51] The issue then becomes whether, on a proper interpretation of the RSA, it can be said that the parties intended Mr. James to have an interest in land, as opposed to a contractual right to the royalty stream from production under the Wolverine coal licenses.

[52] Mr. James points to various factors which he says supports the former interpretation: that he is to be paid based on product that is "produced" from the land (i.e. the Properties) (clause 2.1); that he was entitled to obtain the coal licenses back upon forfeiture (clause 4.3); that the royalty has no end date and therefore would last in perpetuity; and, that the RSA was binding on Walter Energy's successors and assigns (clause 9.1).

[53] I conclude that the first point, that Mr. James was to be paid the royalty based on what is "produced" from the coal licenses, is not compelling in terms of persuading me that he was granted an interest in the coal licenses.

[54] One of the early decisions on the issue is found in *St. Lawrence Petroleum Ltd. v. Bailey Selburn Oil & Gas Ltd. and H.W. Bass & Sons, Inc.*, [1963] S.C.R. 482. The Court was considering a participation agreement which provided, in clause 10b, that the participant would be paid a "percentage of net proceeds of production".

[55] The Court found, in *St. Lawrence*, at p. 488, that these rights were rights to receive money as a matter of contract, and not an interest in land:

> I have reviewed the contents of the two agreements of July 15, 1951, in some detail because clause 10b must be considered in relation to and as a part of each agreement considered as a whole. The essence of each agreement is that, by participating in the cost of drilling a producing well upon the lands in question to the extent of the stipulated percentage of cost, the Participant would become entitled to receive the stipulated percentage of the net proceeds of production of such well. "Net proceeds of production" as defined clearly refers to an amount of money. They are the proceeds from the sale of the Company's share of the production from the well after making those deductions which are provided for in clause 1(*c*). The Company's share of production referred to in this para. (*c*), is, obviously, the 25 per cent interest in production which it could earn under the terms of the Farm-out Agreement. The appellants are, therefore, entitled, as a matter of contract, to a percentage of certain monies to be obtained from the sale of the production from any well in respect of whose drilling costs they have contributed their required portions.

[56] This same interpretation exercise was before the Supreme Court of Canada in *Saskatchewan Minerals v. Keyes,* [1972] S.C.R. 703. There, the Court was considering a royalty agreement which provided for a royalty per ton on all anhydrous salt "produced and sold from the said leasehold property". At 709, Martland J., for the majority, doubted that the use of the word "royalty"' implied any intention to create an interest in land. While not deciding the point, the majority thought the relevant provision was similar to what had been considered in *St. Lawrence* such that only a contractual right, and not an interest in the land, arose.

[57] Similarly, in *Vanguard Petroleums Ltd. v. Vermont Oil & Gas Ltd.*, [1977] 2 W.W.R. 66 (Alta. S.C.), the Court found that the language used - payment of a royalty based on production - was an obligation to pay money rather than an interest in the land. In this case, and others that followed *Vanguard*, an important factor was that the royalty was to be paid only once the substances had been removed from the lands.

[58] In *Vanguard*, the Court stated at p. 74:

> Clause (1) of the royalty agreement, Ex. 2, states that the owners (Westersunds) will pay to the grantee (Vanguard) a gross royalty of seven per cent of the proceeds of sale of the petroleum substances that may be produced, saved and marketed out of the said lands. This is an obligation to pay Vanguard a sum of money out of the proceeds of sale of the petroleum substances *after* they have been removed from the land. The wording in the royalty agreement herein cannot be construed as an interest in situ. In my view, the royalty herein is on the proceeds of the sale of the petroleum substances after removal from the land. In other words, the owner and the grantee agreed to share in the proceeds of the sale of mineral substances after removal. This amounts to an obligation to pay by the owner to the grantee a sum of money based on a percentage of the sale proceeds.
>
> [Emphasis added]

[59] This same reasoning was followed in *Vandergrift,* where the royalty was to be paid on petroleum substances "recovered" from the land. Again, the Court, at p. 28, found that the language used evidenced that the parties intended only a contractual right to the payment of the royalty, rather than a conveyance of, or reservation of, an interest in land:

> In reading the agreement one is struck by the fact that the first reference to the nature of the interest to be conveyed used the expression "royalty on all petroleum substances recovered from the lands", not petroleum within, upon and under the lands, but, those substances "recovered" from the lands. The next reference, in para. 2, is to a royalty on 'petroleum substances found". Again, the reference is not to petroleum substances within, upon or under the lands, but to substances "found" within, upon or under the lands. The other references in agreement are to royalty in terms of "a share of production", "petroleum substances sold", "petroleum substances produced". Taken as a whole, I am of the view that the agreement conveys a contractual right to the payment of a royalty on petroleum substances produced from the lands, that is, a share of the petroleum after it has been removed, rather than on interest in land.

[60] This type of language is to be distinguished from that discussed in *Bensette and Campbell v. Reece*, [1973] 2 W.W.R. 497 (Sask. C.A.), a decision upon which Mr. James relies. In that case, at p. 500, the words "royalty in all the ... minerals ... which may be found in, under or upon the lands" were found to be sufficient to support the conclusion that there was a conveyance of an interest in the minerals themselves *in situ* and, therefore, an interest in the land.

[61] Various other decisions also consider the formality of the conveyancing language in relation to the land itself. In that respect, Mr. James refers to two other decisions, which I consider to be distinguishable from the circumstances here.

[62] In *Canco Oil & Gas Ltd. v. Saskatchewan*, [1991] 4 W.W.R. 316 (Sask. Q.B.), the Court found that the royalty was an interest in the land. That determination, however, was based on the use of the words "grant, assign, transfer and convey", and also the clear statement in the agreement that the interest conveyed was an interest in land and was to run with the land.

[63] Similar formal words of conveyance are found in *Blue Note Mining Inc. v. Merlin Group Securities Ltd.,* 2008 NBQB 310. There, the agreement provided:

> [7] ... East West Caribou Mining Limited ... hereby grants to East West Minerals N.L. ... a freely assignable 10% net profits interest in the mine....
>
> [Emphasis added]

The highlighted portions of the above agreement were found to evidence an intention to establish an interest in the land.

[64] As a further example, Walter Energy refers to *Scurry-Rainbow Oil Ltd. v. Galloway Estate*, [1993] 4 W.W.R. 454 (ABQB); aff'd [1995] 1 W.W.R. 316 (Alta. C.A.). The lower court undertook an extensive review of the authorities, including the cases I have discussed above. The court referred to such formal language as establishing an interest in land:

> [102] In my opinion O'Leary J. did not give sufficient weight to some of the other words used in cl. 2. I refer in particular to the verbs "grant, bargain, sell, assign, transfer and set over"; to the descriptors "all the estate, right, title,

> interest, claim and demand whatsoever, both at law and equity"; the words "to have and to hold"; and the words "unto the Trustee, its successors and assigns forever". Taken together, these words seem to me more like words describing in perpetuity property rights than they do words describing a relatively temporary arrangement (such as a contractual right) which would be unenforceable against the Owner once he sold the property.

[65] The final case to which I will refer is *St. Andrew Goldfields Ltd. v. Newmont Canada Ltd.*, [2009] O.J. No. 3266; aff'd 2011 ONCA 377, where much of the above reasoning in the authorities was discussed and applied:

> [98] Royalty interests can be interests in land if the language used in describing the interest is sufficiently precise to show that the parties intended the royalty to be a grant of an interest in land, rather than a contractual right to a portion of the substances recovered from the land, and the interest, out of which the royalty is carved, is itself an interest in land. The intentions of the parties, judged by the language creating the royalty, determine whether the parties intended to create an interest in land or to create contractual rights only. (*Bank of Montreal v. Dynex Petroleum Ltd.*, [2002] 1 S.C.R. 146, at paras. 12, 14 and 22.)
>
> [99] Turning then to the language of the Barrick royalty agreement, Newmont "***covenants and agrees...to pay***...a net smelter return royalty...with respect to all valuable minerals ***produced*** from mining rights and surface leases known as the Holt-McDermott mining claims and leases" (my emphasis added).
>
> [100] While I agree with Newmont that there is no magical "incantation" that must be used to create an interest in land, it is trite to say that language used in an agreement is intended to have and does have a certain meaning. As all the witnesses at this hearing acknowledged, each royalty agreement is different. It is therefore necessary to examine the specific wording used by the parties to determine the meaning that they ascribed to the royalty in this case and the rights that they intended to create.
>
> [101] The use of the words "covenants and agrees to pay" and "produced" in the description of the Barrick royalty is the first indication that the parties intended to create only contractual rights to the payment of a royalty and not an interest in land.
>
> [102] The case law that the parties have submitted makes a valid distinction between the "granting" of royalties attached to or "in" the land or the minerals themselves, thus creating an interest in the land, and the payment of royalties attached to the minerals or revenues "produced" or "removed" from the land, resulting in the creation of contractual rights to the payment of a share of the revenue from the minerals after they have been extracted: see, for example, *Bensette and Campbell v. Reece*, [1973] 2 W.W.R. 497 (Sask.C.A.), at p. 500; *Vandergrift v. Coseka Resources Limited* (1989), 67 Alta. L.R. (2d) 17 (Alta.Q.B.), at pp. 26 to 28; *Guar. Trust Co. v. Hetherington* (1987), 50 Alta. L.R. (2d) 193 (Alta.Q.B.), at pp. 216 to 222 and 224; *St. Lawrence Petroleum Limited v. Bailey Selburn Oil & Gas Ltd. (No. 2)* (1963), 45 W.W.R. 26

> (S.C.C.), at pp. 31 to 33; and *Blue Note Mining Inc. v. Fern Trust (Trustee of)*, [2008] N.B.J. No. 360 (N.B.Q.B.), at paras. 34 and 40.
>
> [103] Other relevant factors to determine the parties' intention to create contractual rights or an interest in land are: whether the royalty holder retains a right to enter upon the lands to explore for and extract the minerals: *Vandergrift v. Coseka Resources Limited*, *supra*, at pp. 28 to 29; and whether the owner of the lands is in complete control of its interest in the lands acquired with the only right in the royalty holder being to share in the revenues produced from the minerals extracted from the lands: *St. Lawrence Petroleum Limited v. Bailey Selburn Oil & Gas Ltd. (No. 2)*, *supra*, at pp. 32 to 33.
>
> [104] Under the Barrick royalty agreement, the royalty holder retains no interest in or control over the kind of operations or activities that the owner of the property may carry out and, as an express condition or limitation of the royalty, the royalty holder has no right to claim a reversionary interest in any of the property should the owner seek to relinquish all or any portion of the property. The royalty holder's rights to re-enter upon the property are only for accounting and auditing purposes with respect to the protection of the royalty holder's contractual rights to payment of the royalty.
>
> ...
>
> [106] From my reading of the provisions of the Barrick royalty agreement, I cannot see that the parties intended by the royalty to create an interest in land. The provisions are consistent with the creation only of a contractual right to payment of the royalty. It would have been a very simple thing for the parties to have used specific language to create an interest in land. The effect of the Barrick royalty agreement is to create only a contractual right to the payment of the royalty.

[66] Based on the principles arising from the above authorities, and considering the RSA provisions as a whole, I conclude that the RSA was not intended to grant Mr. James an interest in the Wolverine coal licenses; rather, the RSA simply represented a contractual right to payment on the part of Mr. James as the consideration for which he transferred his rights in the Properties to Walter Energy.

[67] I rely upon the following:

a) Walter Energy is specifically stated to have "acquired" the licenses and to be the beneficial owner of them free of any "claims of others" (Recital B and clause 3.1(c));

b) I agree with Mr. James that he gave up valuable consideration for the royalty and that he shared the risk of recovery going forward. However, as Pearlman J. noted at para. 126 in *Fawcett 2009*, Mr. James had no direct

rights in respect of the coal licenses and he relinquished any further control in respect of them. Mr. James had no assurance that he would gain any consideration under the royalty if the Properties were never put into production;

c) clause 2.1 does not include any formal conveyancing language to, for example, "grant, assign, transfer or convey" any rights to Mr. James in relation to the coal licenses (*contra Canco*, *Blue Note* and *Scurry-Rainbow*). No such words, or similar words, are used; rather, it is simply an obligation to *pay* the royalty;

d) with Mr. James having some control over WCC at the time, it would have been a simple matter to have included clear language to the effect that Mr. James was to be granted a royalty that would "run with the land" (see *Canco*). As in *Vandergrift*, at p. 27, the choice of language was within his control but no such clear language was used;

e) the reference to the payment of the royalty being based on what is "produced" from the coal properties is simply the means by which the parties agreed to calculate the amount of the royalty. It is not a reference to a royalty *in* the "Properties" or coal licenses: see *St. Lawrence*, *Saskatchewan Minerals*, *Vanguard*, *Vandergrift* and *St. Andrew Goldfields*. I note that the parties disagree as to whether the royalty is due upon production (i.e. once removed from the land), or upon the coal being shipped to port and priced at that time for the purposes of calculating the 1% royalty. In my view, this is not a relevant distinction as, in any event, the coal would have been severed from the lands by that time;

f) clause 4.3 of the RSA indicates that the parties did consider what rights the Investors would have in relation to the coal licenses in the future. Those rights were specifically addressed in the context of a forfeiture of the Properties, likely under the *Coal Act*, R.S.B.C. 1996, c. 51 (since repealed in 2004), a circumstance which is not relevant here. Further, the RSA does anticipate that any assignment of the RSA by WCC would

require the consent of Mr. James (clauses 8.1/9.1). However, that circumstance is not what is happening here, since no one has sought to assign the RSA, let alone without Mr. James' consent; and

g) importantly, the RSA does not restrict the ability of Walter Energy to sell the Properties, and it also contains no obligation on the part of Walter Energy to require any purchaser of the Properties to assume its obligations under the RSA.

[68] As stated above, Mr. James also points to the perpetual obligation under the RSA although, presumably, the obligation to pay the royalty would be tied to the life of the mine in terms of its ability to produce coal. He also refers to the dissent of Laskin, J., as he then was, in *Saskatchewan Minerals* where he relied, to some extent, on a clause similar to clause 9.1 of the RSA, which stated that the agreement was to be binding on successors and assigns of the parties, at p. 716 and 726. A similar comment was made in *Scurry-Rainbow* at para. 88.

[69] In my view, however, these aspects of the RSA do not assist Mr. James. It is not entirely unusual that an agreement is perpetual in the sense of requiring payment with no set end date. Further, the clauses requiring Mr. James' consent to assignment, and that it is binding on permitted assigns, is also not unusual in a commercial context. These clauses do not detract from the essential nature of the right granted to Mr. James found in clause 2.1, nor do they enhance his ability (or lack of ability) to control the petitioners' disposition of the Properties after his transfer of them.

[70] As the petitioners argue, Mr. James had other means by which he could have obtained the right to control any further disposition of the Properties by WCC. For example, the PVM royalty agreement includes a restriction on the sale of the properties or interests subject to the royalty, and requires that any purchaser of the properties assume the royalty obligations to PVM.

[71] Further, paragraph 18 of PVM's royalty agreement requires the granting of a security interest to PVM in respect of certain mineral titles to secure the obligations

under that agreement. Mr. James could have obtained a security interest in relation to WCC's obligations to pay the royalty under the RSA; he chose not to do so despite having control of WCC at the time: see *Fawcett 2010* at para. 17.

[72] Further, these clauses relating to successors and assigns cannot be controlling in the context of the insolvency proceedings that are currently underway. The RSA is an executory contract, and as with other agreements to which the petitioners are parties, it is subject to being dealt with under the *CCAA* and court orders granted under that statutory jurisdiction. That includes the possibility that the petitioners may disclaim the RSA in accordance with s. 32 of the *CCAA*.

Procedural Issues

[73] Turning to the procedural issues, Mr. James asserts that he was not consulted regarding the Conuma transaction and that he does not understand why the RSA is not to be assumed. He argues that there is no persuasive reason as to why the RSA is not being assumed by Conuma, and that to exclude it from the APA is "improper, unjust and unfair".

[74] Despite Mr. James' assertions about a lack of transparency, I consider that the application materials clearly set out that Conuma does not intend to assume any obligations arising from the RSA. Mr. James' view is that he should be given some explanation as to why that decision was taken by Conuma, although I am not sure that that is either necessary or beneficial. If it was not already clear enough from the application materials, Conuma's counsel has now clearly stated, on the record, that it has no intention of assuming any obligations under the RSA. Clearly, Conuma has exercised its business judgment on a cost/benefit basis (as it would do in relation to any of the contracts held by the petitioners), and made a business decision that it is not in Conuma's interest to do so.

[75] Likewise, I see no concern arising from the BSLP transaction. Mr. James refers to a share purchase agreement dated October 31, 1997 by which he, and others, agreed to sell his shares in Western Coal Corp. to WCC. In consideration of those transfers, WCC agreed to pay a royalty of 0.75% of the selling price of coal

sales from certain Belcourt properties. The Belcourt put option has been described in the APA. It is an option in respect of the petitioners' interests in the BSLP joint venture. Mr. James has not put forward any evidence that he has an interest in BSLP and I see nothing in the APA that addresses, negatively or positively, this royalty agreement.

[76] In any event, it remains to be seen whether, and on what terms, Conuma may acquire the petitioners' interest in BSLP and how the royalty agreement may be affected.

Conclusion

[77] I find that, when read as a whole, the RSA and the rights to a royalty thereunder do not convey to Mr. James any interest in the coal licenses or Properties; rather, Mr. James was granted a contractual right to receive a payment of a royalty on coal products produced from the relevant coal licenses. Accordingly, as with any other contract held by an insolvent debtor who has sought protection under the *CCAA*, the RSA may be addressed by the petitioners in accordance with the *CCAA* and the orders granted in this proceeding.

[78] I also see no unfairness in the Conuma transaction being approved without reference to Mr. James' rights under the RSA. As in any such transaction, a purchaser will assess the cost/benefit of assuming any contracts held by the debtor and make a determination on that basis. While Mr. James has been on the losing end of that assessment by Conuma in relation to the RSA, that does not mean that the process was unfair or unreasonable.

[79] It certainly does not lead to the conclusion that the Conuma transaction is not supported by the *CCAA*, s. 36 factors, as alleged by Mr. James. I agree that the RSA is a consideration for the court in the context considering that transaction. However, in the overall context of the APA, and the admittedly overwhelming benefit to the entire stakeholder group (which includes Mr. James), Mr. James' disappointment in the outcome cannot rule the day.

[80] Accordingly, the proposed approval and vesting order in respect of the Conuma transaction, as sought by the petitioners, is granted.

OTHER ORDERS

[81] Given the impending sale of their major assets to Conuma, the petitioners also seek a claims process order. As was anticipated at the outset, determining the validity and quantum of claims in order to make a distribution to the creditors through such a claims process is important in liquidating *CCAA* proceedings: *Bul River Mineral Corporation (Re)*, 2014 BCSC 1732 at para. 36; *Timminco Limited (Re)*, 2014 ONSC 3393 at para. 41.

[82] The proposed claims bar date is October 5, 2016. It is anticipated that if any disputes as to claims arise, these will be brought before the court on a *de novo* basis in the first week of January 2017.

[83] The claims process is to be implemented and run by the Monitor, with input from the CRO, and with assistance of certain soon-to-be former key employees of the petitioners. These key employees are to remain accessible to the petitioners and the Monitor even after the sale to Conuma closes under a transition services agreement.

[84] The proposed order is in fairly standard terms; however, specific processes are to be put in place for certain stakeholders.

[85] Claims of individual employees will be determined by the Monitor, and upon being notified of the amount of their claim, they need only respond if they dispute the amount. The Union will receive notice of the claims and may dispute the amount on behalf of any employee. As I anticipated in my earlier reasons from June 2016 (*Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 1413 at para. 33), this aspect of the claims process has arisen from fruitful discussions between the petitioners, the Monitor and the Union, with the latter providing input on the most efficient way of adjudicating these claims.

[86] The unique claim of the 1974 Pension Plan poses some procedural challenges for the parties. Again, this is a substantial claim (some $1.4 billion) which, if valid, has the potential to overwhelm most other claims against the estate. This claim is asserted as a liability of the petitioners based on the provisions of U.S. legislation, being the *Employee Retirement and Income Security Act of 1974*, 29 U.S.C. § 1001, as amended, (commonly referred to as "*ERISA*"). There has been some exchange of materials between the parties. As matters stand, the petitioners dispute that they are liable under U.S. law (or *ERISA*), and that this is a valid claim against the Canadian petitioners in any event.

[87] After some negotiations, it is intended that, rather than file a proof of claim, the 1974 Pension Plan will file a notice of civil claim in a separate proceeding in this court to assert the claim. Thereafter, the petitioners, and anyone else on the service list, will be entitled to file a response to that claim. Once the issues are framed, it is intended that the parties will come before the court to determine the procedures and timing by which the parties will develop and present their evidence and legal arguments and how the issues are best resolved. The present thinking is that the issues are likely suitable for disposition by summary trial, although that remains to be seen. The parties are cognizant of the need to adjudicate the issues as soon as possible so as not to delay any distribution to the creditors.

[88] I am satisfied that the proposed claims process order here treats all potential claim holders fairly and equally and is appropriate in the circumstances. In particular, the proposed timeline is reasonable and will afford claimants ample opportunity to formulate their materials and submit them to the Monitor.

[89] This process will also address any claim that may be advanced by Mr. James as a "Restructuring Claim" arising from any disclaimer of the RSA by Walter Energy. In the event of a disclaimer of the RSA, Mr. James will be provided with a proof of claim at the appropriate time in the claims process to give him an opportunity to prove his claim.

[90] Aside from Mr. James, there were no other objections to the proposed order. The claims process order is granted.

[91] Given the granting of the above orders, the petitioners apply for an extension of the stay of the proceedings to January 17, 2017. This date has been chosen to accommodate not only the closing of the Conuma transaction, but also to coincide with the anticipated time frame by which any disputed claims are to be resolved by the court, if necessary. During that time, the Monitor will continue with the claims process. The Monitor will also file a report within a reasonable time after the claims bar date of October 5, 2016 so that the stakeholders are updated not only on the results of the sale, but also on the results of the claims process (including inter-company claims). The CRO will remain involved over this period of time to assist the Monitor, as need be, and also to arrange for the sale of assets that are not being purchased by Conuma (such as the U.K. assets).

[92] The evidence confirms that the petitioners will have sufficient cash flow to continue operations, as currently conducted, to the extension date; although, of course, there will be substantially reduced operating expenditures upon the closing of the sale to Conuma.

[93] Despite the long extension period, the petitioners anticipate that there will continue to be oversight by the court in the interim period. At a minimum, the parties anticipate a further hearing in October to consider the procedural issues arising in relation to the 1974 Pension Plan claim. Obviously, if the Conuma sale has not closed by September, I would anticipate that a court application would be scheduled soon thereafter to consider next steps.

[94] Both Mr. Aziz and the Monitor, in its Fourth Report, confirm the unchallenged view that the petitioners are acting in good faith and with due diligence. Accordingly, I am satisfied that an extension of the stay to January 17, 2017 is appropriate at this time and that is granted: *CCAA*, s. 11.02(2) and (3).

[95] Finally, the petitioners apply for certain miscellaneous orders. The first order is approval of an amendment of the PJT engagement letter which was earlier approved. I am satisfied that the amendment accords with the intention of the parties as to PJT's compensation for their role in the SISP. The amendment reflects what was already determined to be a fair and reasonable compensation for PJT. The second order is to enhance the powers of the Monitor to not only implement the claims process, but to take control of certain of the petitioners' financial affairs. The latter powers are particularly appropriate given the anticipated transfer of the petitioners' employees to Conuma upon closing. The Monitor supports proceeding in this fashion so as to move as quickly and expeditiously as possible toward the monetization of the assets and a distribution to the creditors. Both orders are granted as sought.

"Fitzpatrick J."

TAB 9

This is the 1st Affidavit of
William G. Harvey in this case and
was made on December 4, 2015

NO.
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 A PLAN OF COMPROMISE OR ARRANGEMENT OF
WALTER ENERGY CANADA HOLDINGS, INC. AND THE OTHER
PETITIONERS LISTED ON SCHEDULE "A"

PETITIONERS

AFFIDAVIT

I, **WILLIAM G. HARVEY**, Chartered Financial Analyst, of the City of Birmingham, in the State of Alabama, United States of America, MAKE OATH AND SAY AS FOLLOWS:

I. INTRODUCTION

1. I am the Executive Vice President and Chief Financial Officer of Walter Energy Canada Holdings, Inc. and the Chief Financial Officer and Executive Vice President of Walter Energy, Inc. and as such have personal knowledge of the facts hereinafter deposed to, 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 petition by Walter Energy Canada Holdings, Inc. and its direct and indirect subsidiaries and affiliates listed on **Exhibit "A"** to this affidavit under the heading "Petitioners" (collectively, the "**Canadian Petitioners**") for relief under the *Companies' Creditors Arrangement Act*, 1985, c. C-36, as amended (the "**CCAA**") and for the extension of such relief to the partnerships listed on **Exhibit "A"** to this Affidavit under the heading "Partnerships" (such partnerships, collectively with the Canadian Petitioners the "**Walter Canada Group**").

3. I have spoken with certain officers, directors, employees and advisors of the Walter Canada Group and the U.S. Petitioners (defined below), and where I have relied on information from such

discussions, I believe such information to be true. All amounts are in Canadian dollars unless otherwise indicated.

4. This affidavit contains information under the following headings:

II. OVERVIEW

5. The Walter Canada Group consists of producers and exporters of metallurgical coal for the global steel industry. The coal industry has experienced a significant and prolonged downturn. As a result, and as more fully described herein, the operations of the Walter Canada Group were idled, their mines were placed in care and maintenance and efforts were made to contain costs in hopes that the price of coal would rebound. In addition, efforts have been made to find an out-of-court resolution of the Walter Canada Group's financial difficulties. The Walter Canada Group has exhausted its efforts to reach an out-of-court solution to its financial difficulties and faces a looming liquidity crisis.

6. Walter Energy Canada is a wholly owned subsidiary of Walter Energy U.S. Walter Energy U.S. and a number of its U.S. subsidiaries filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code (the "**Chapter 11 Cases**") with the United States Bankruptcy Court in Birmingham, Alabama (the "**U.S. Court**") on July 15, 2015 (the "**U.S. Petition Date**"). As discussed in more detail below, developments in the Chapter 11 Cases have resulted in the approval of bid procedures and the approval of a stalking horse asset purchase agreement that will (if it is the successful bid) see the majority of the assets of Walter Energy U.S. and the assets of certain of its U.S. subsidiaries sold to a new company pursuant to a credit bid in favour of certain lenders to the Walter U.S. Group. The equity interests in the members of the Walter Canada Group and the assets held by the members of the Walter Canada Group are not part of the purchased assets under the credit bid. As a result of the developments in the Chapter 11 Cases and the looming liquidity crisis faced by the Walter Canada Group, it has become necessary for the Petitioners to seek relief pursuant to the CCAA for all of the members of the Walter Canada Group so that they can develop and implement an independent sales process to maximize value for their stakeholders in consultation with various governmental authorities.

7. The Walter Canada Group is facing the following challenges:

(a) costs in excess of $16 million per year associated with maintaining the Walter Canada Group's mining operations in an idled state, with limited offsetting revenue;

(b) aggregate long-term liabilities in respect of the Canada Revolver (defined below) associated with undrawn letters of credit of approximately of $22.6 million with associated annual fees and interest expenses;

(c) claims of employees and other creditors that have or will crystallize in the near term if certain members of the Walter Canada Group do not recommence mining operations, including an employee claim estimated at approximately $11.3 million that will allegedly become due if unionized employees at the Wolverine Mine do not return to work before April 2016;

(d) due and accruing due B.C. mineral tax liabilities, including liabilities in respect of a payment plan entered into by Walter Energy Canada and the B.C. Ministry of Finance and potential additional liabilities relating to years that have not yet been assessed;

(e) loss of the financial support normally provided by Walter Energy U.S. as a consequence of developments in the Chapter 11 Cases; and

(f) pending loss of essential managerial and back office support that will occur upon the consummation of a sale of a significant portion of the assets of Walter Energy U.S. and certain of its U.S. subsidiaries.

8. The Walter Canada Group has a finite amount of liquidity available to address the foregoing challenges and, as discussed in more detail below, limited access to further sources of funding in the near term. These challenges, when combined with the projected liquidity shortfall and the current market environment for metallurgical coal and steel, make it necessary for the Walter Canada Group to take immediate steps to attempt to stabilize their affairs and seek a going concern outcome in consultation with the applicable governmental authorities while the members of the Walter Canada Group still have sufficient resources available. If a going concern solution cannot be found, the Walter Canada Group will need to implement a prudent and responsible wind down of its remaining operations.

9. I made a declaration dated July 15, 2015 in support of the first day motions in the Chapter 11 Cases, which is attached as **Exhibit "B"** to this affidavit (my "**First Day Declaration**"). My First Day Declaration provides a comprehensive overview of the Walter Group's background, its business and the events leading up to the commencement of the Chapter 11 Cases. In this affidavit, I provide a high-level overview of the Walter Group's background and relevant details regarding the Chapter 11 Cases, focusing on the operations of the Walter Canada Group.

(A) Defined Terms

10. This affidavit will use the following defined terms, which are consistent with my First Day Declaration. For the sake of clarity, if a defined term uses the word **"Energy"**, it is a discrete corporate entity. If a defined term uses the word **"Group"**, it represents a collection of corporate entities:

(a) ***"Walter Energy U.S."*** is Walter Energy, Inc., a company incorporated under the laws of Delaware and headquartered in Birmingham, Alabama, and the parent company of all the other members of the Walter Group. Walter Energy U.S. directly or indirectly has an interest in all of the members of the Walter Group.

(b) ***"Walter Group"*** includes all companies, partnerships or other corporate structures directly or indirectly affiliated with Walter Energy U.S.

(c) ***"Walter U.S. Group"*** and ***"Walter Non-U.S. Group"***: The Walter Group operates its business in two distinct segments: (i) U.S. Operations (the "**Walter U.S. Group**"), and (ii) Canadian and U.K. Operations (the "**Walter Non-U.S. Group**"). As discussed in more detail below, Walter Energy U.S., a public company, reports its financial results by segment and does not provide financial reporting for the Walter Canada Group or the Walter U.K. Group independently.

(d) ***"Walter Canada Group"*** and ***"Walter U.K. Group"***: The Walter Non-U.S. Group can be further broken down into Canadian and U.K. operations (the "**Walter Canada Group**" and "**Walter U.K. Group**", respectively). The Walter Canada Group consists of all the entities listed in Exhibit "A", including under the headings "Petitioners" and "Partnerships". The members of the Walter U.K. Group are indirect subsidiaries of Walter Energy Canada.

(e) ***"Walter Energy Canada"*** is Walter Energy Canada Holdings, Inc., a company incorporated under the laws of B.C. Walter Energy Canada is the parent company for the Walter Non-U.S. Group. Walter Energy Canada is wholly owned by Walter Energy U.S.

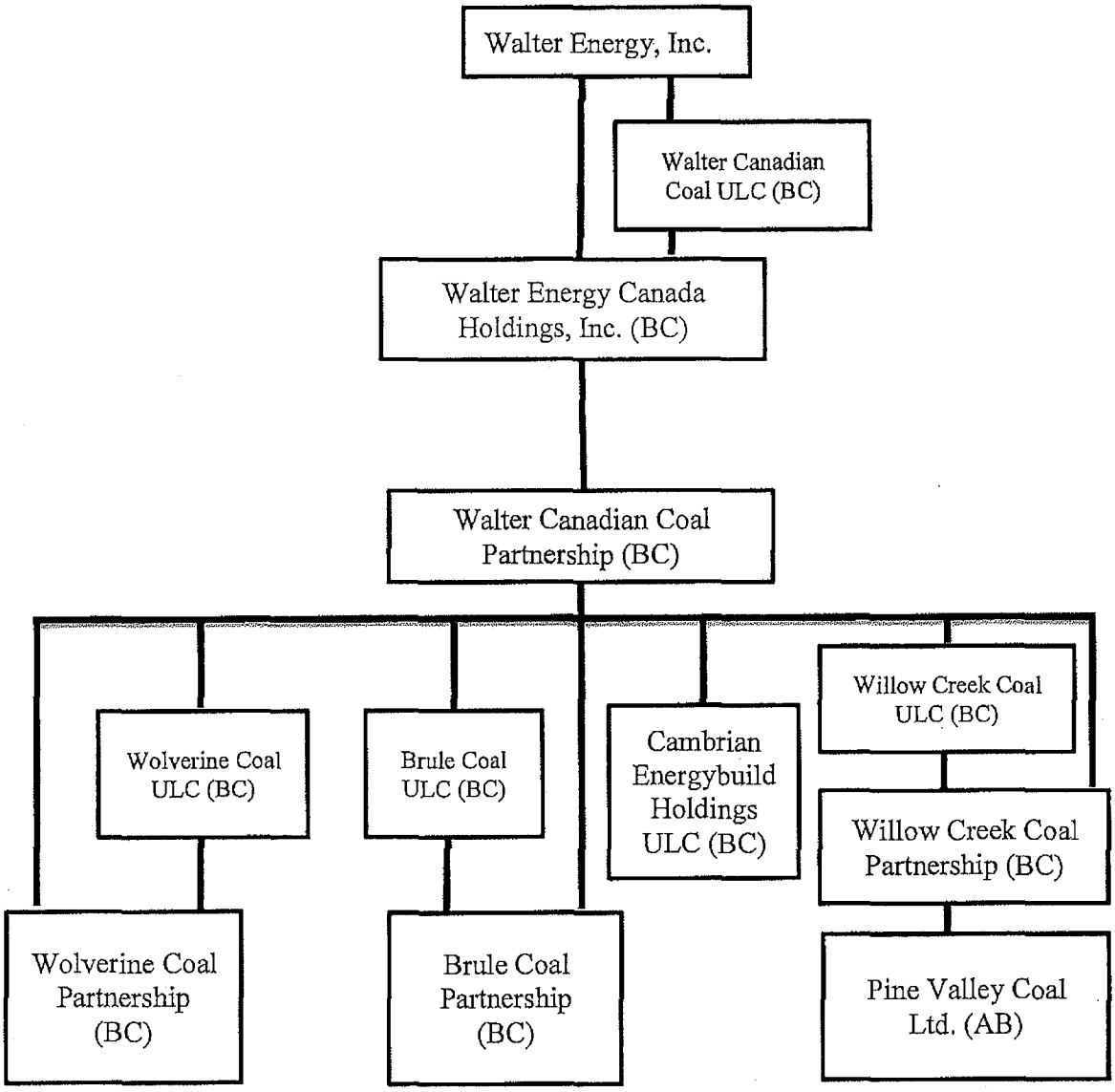
(f) ***"U.S. Petitioners"*** includes substantially all members of the Walter U.S. Group. Attached hereto as **Exhibit "C"** is a list of the members of the Walter U.S. Group that filed for and were granted Chapter 11 protection.

(B) The Walter Canada Group

11. Walter Energy Canada is a holding company and the general partner of Walter Canadian Coal Partnership. It was incorporated on March 9, 2011. All of the issued and outstanding shares of Walter Energy Canada are held by Walter Energy U.S. Walter Energy U.S. formerly traded on the NYSE under the symbol "WLT", but was delisted due to failure to meet certain continued listing conditions.

12. The principal operating entity of the Walter Canada Group is Walter Canadian Coal Partnership, a B.C. general partnership. Its partners are Walter Energy Canada and Walter Canadian Coal ULC, a B.C. unlimited liability company formed on June 28, 2012. All of the issued and outstanding shares of Walter Canadian Coal ULC are held by Walter Energy Canada.

13. The principal assets of the Walter Canada Group are the Brule, Willow Creek and Wolverine Mines, located in northeast B.C., and the Walter Energy Canada Group's 50% interest in the Belcourt Saxon Coal Limited Partnership. As the organizational chart attached hereto as **Exhibit "D"** indicates, Walter Canadian Coal Partnership is a partner of each of the three B.C. partnerships that operate the Canadian mines: Wolverine Coal Partnership, Brule Coal Partnership and Willow Creek Coal Partnership. Each of the partnerships has a separate B.C. unlimited liability company as its other partner. The mines will be discussed in more detail below. The following is a simplified version of the organizational chart at Exhibit "D":



15. British Columbia is the Walter Canada Group's chief place of business.

(C) The Walter U.K. Group

16. The Walter Group also has U.K. assets, which are held through a B.C. unlimited liability corporation, Cambrian Energybuild Holdings ULC ("**Energybuild ULC**"). The Walter U.K. Group's operations consist of an underground development mine located in South Wales that produces anthracite coal.

17. Energybuild ULC is wholly owned by Walter Canadian Coal Partnership, and is a holding company that holds shares of a U.K. holding company that, in turn, owns shares of the U.K. companies that operate the mine in South Wales and perform other related activities.

18. The Walter U.K. Group's primary activity has been the development and expansion of the Aberpergym underground coal mine located at Glynneath in the Neath Valley. In the fall of 2011, the Walter U.K. Group stopped continuous mine development operations to focus on completing a new drift opening. The Walter U.K. Group completed the upper section of the drift during 2012, but due to challenges related to an oversupply of coal and decreased demand, the Walter U.K. Group took steps to reduce development spending in this U.K. mine until market conditions improve. This has slowed the development of the drift opening.

19. The Walter U.K. Group idled the U.K. mines in 2015 to further manage its liquidity. Towards that end, on or about June 5, 2015, the Walter U.K. Group commenced a 30-day consultation period with the National Union of Mineworkers South Wales in connection with the Walter U.K. Group's plans to idle the U.K. mines. On or about July 4, 2015, the majority of the Walter U.K. Group's employees were rendered redundant, and the mines now retain only those employees necessary to keep the premises in safe, idling condition. Before July 4, 2015, the Walter U.K. Group employed approximately 70 full-time employees, including management and personnel engaged in underground mining activities. Approximately 10 employees were retained to sell remaining coal inventory and to manage security and environmental matters. Development of the U.K. mine can begin relatively quickly if market conditions improve.

20. Prior to the commencement of the Chapter 11 Cases, the Walter U.K. Group generally funded its operations through sales of coal and intercompany loans received from Walter Energy U.S. The Walter U.K. Group owes approximately £4 million to the Walter U.S. Group in respect of borrowings made between April 2011 and March 2015. In June 2015, the Walter Canada Group advanced an additional US$3 million to the Walter U.K. Group to address its funding needs. It is anticipated that the Walter U.K. Group will not need any additional funding in 2015 and is projected to have sufficient funding to operate in its current idled state until the end of the third quarter of 2016.

21. At this time, it is not anticipated that the members of the Walter U.K. Group will be petitioners in these CCAA proceedings. The members of the Walter U.K. Group are not debtors in the Chapter 11 Cases.

(D) The Walter U.S. Group

22. As discussed in more detail in my First Day Declaration, the Walter U.S. Group has operations in Alabama and West Virginia. As of the U.S. Petition Date, the U.S. Petitioners had the following obligations (excluding accrued and unpaid interest):

Facility	Outstanding Indebtedness
2011 Credit Agreement	Term B Loan: $978.2 million US Revolver: $ 76.9 million[1]
9.50% Senior Secured First Lien Notes due October 15, 2019 ("**First Lien Notes**")	US$970.0 million
11.0% / 12% Senior Secured Second Lien PIK Toggle Notes due 2020	US$360.5 million
9.875% Senior Notes due 2020	US$388.0 million
8.50% Senior Notes due 2021	US$383.0 million
Total Funded Debt:	**US$3.146 billion**

23. The Walter U.S. Group has also guaranteed the US$150 million multi-currency revolving credit facility available to Walter Energy Canada under the 2011 Credit Agreement (the "**Canadian Revolver**"). No amounts are drawn on the Canadian Revolver, but the Walter U.S. Group has guaranteed Walter Energy Canada's obligations in respect of approximately $22.6 million of undrawn letters of credit issued under the 2011 Credit Agreement that are discussed in more detail below.

24. The Walter Canada Group does not have any obligations in respect of the US$3.146 billion of outstanding indebtedness described above. The Walter Canada Group only has limited obligations in relation to certain letters of credit issued for the benefit of the Walter Canada Group under the 2011 Credit Agreement. These obligations are described in more detail below.

25. Prior to the commencement of the Chapter 11 Cases, the Walter Group engaged in extensive negotiations with a committee of lenders under the 2011 Credit Agreement and holders of the First Lien Notes (the "**Steering Committee**") and their advisors to address the challenges faced by the Walter Group, including those faced by the Walter Canada Group. As a result, the U.S. Petitioners entered into a Restructuring Support Agreement ("**RSA**") with the Steering Committee. The RSA contemplated a consensual debt-to-equity conversion of Walter Energy U.S.'s prepetition first lien secured debt for substantially all of the reorganized Walter Group's common stock. As a result of developments in the Chapter 11 Cases, however, the RSA was terminated.

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[1] The US Revolver is undrawn but a number of outstanding letters of credit have been issued.

26. The Steering Committee and the U.S. Petitioners then engaged in further negotiations which resulted in the granting of the amended final order (A) authorizing postpetition use of cash collateral, (B) granting adequate protection to the prepetition secured parties and (C) granting related relief in the Chapter 11 Cases on September 28, 2015 (the "**Cash Collateral Order**"). A copy of the Cash Collateral Order is attached as **Exhibit "E"** to this affidavit. The Cash Collateral Order required the U.S. Petitioners to commence a sales process for certain assets held by the U.S. Petitioners and has certain more direct consequences for the Walter Canada Group, discussed below.

27. In accordance with the Cash Collateral Order, the U.S. Petitioners have begun to implement a sales process in the Chapter 11 Cases. On November 5, 2015 Walter Energy U.S. announced that it had entered into a stalking horse asset purchase agreement (the "**U.S. APA**") with a newly formed entity capitalized and owned by the First Lien Lenders ("**Coal Acquisition LLC**"), pursuant to which Coal Acquisition LLC became the stalking horse bidder in a bid to acquire substantially all of the Walter U.S. Group's Alabama assets. On November 25, 2015, the U.S. APA and related bid procedures were approved by the U.S. Court.

28. Pursuant to the bid procedures, a court-supervised auction process under section 363 of the U.S. Bankruptcy Code is scheduled to be held on January 5, 2016. Accordingly, the U.S. APA is subject to higher or otherwise better offers, among other conditions. If the U.S. APA is the successful bid pursuant to the sales process, it is anticipated that the transaction will close in mid to late February.

29. The APA does not include all the assets held by the Walter U.S. Group, such as the shares of Walter Energy Canada, nor does it include the assets held by members of the Walter Non-U.S. Group. PJT Partners Inc. has been canvasing the market in an attempt to find a purchaser for the assets of the Walter Canada Group. Following discussions with applicable government authorities, the Walter Canada Group anticipates that it will seek this Court's approval for further marketing efforts to be undertaken for the assets of the Walter Canada Group in these CCAA proceedings.

30. Once the sale contemplated by the U.S. APA is complete, the Walter U.S. Group will no longer be in a position to support the Walter Non-U.S. Group financially and it will no longer provide essential management services, unless other arrangements are made. These essential management services include accounting, procurement, environmental management, tax support, treasury functions, and legal advice. Currently, the Walter Canada Group pays approximately $1 million per month to the Walter U.S. Group for these essential management services, based on a historical overhead allocation methodology. Negotiations among the Walter Canada Group and the Walter U.S. Group are underway to address the provision of these services and the pricing of such services until the consummation of the transaction contemplated by the U.S. APA (assuming the U.S. APA is the successful bid).

(E) The Western Acquisition

31. On April 1, 2011, Walter Energy U.S. acquired Western Coal Corp. ("**Western**") and its subsidiaries. Walter Energy Canada was formed for the purpose of acquiring Western. Walter Energy Canada acquired all outstanding common shares of Western for US$3.3 billion[2] under an arrangement agreement approved by the B.C. Supreme Court pursuant to the B.C. *Business Corporations Act* (the "**Western Acquisition**"). Certain transactions in connection with the Western Acquisition, including share purchases, were completed and consideration was paid prior to April 2011. If these transactions are included, the total consideration paid in respect of the Western Acquisition was approximately US$3.7 billion. Before 2011, the Walter Group did not have any operations in Canada or the U.K. When the Western Acquisition closed, Walter Energy Canada acquired all direct and indirect subsidiaries of Western and their assets, including mines and mineral reserves in Canada, West Virginia and the U.K.

32. Concurrently, and in connection with entering into the arrangement agreement with Western, Walter Energy U.S., Western and Walter Energy Canada entered into a credit facility with Morgan Stanley Senior Funding, Inc., the Bank of Nova Scotia ("**BNS**") and the other lenders thereunder (the "**Bank Lenders**") pursuant to which, subject to the conditions set forth therein, the Bank Lenders committed to providing Walter Energy U.S. (the "**U.S. Borrower**"), Western and Walter Energy Canada (the "**Canadian Borrowers**" and, collectively with the U.S. Borrower, the "**Borrowers**") with US$2.725 billion of senior secured credit facilities, the proceeds of which were used to (i) fund the cash consideration for the Western Acquisition, (ii) pay certain fees and expenses in connection with the Western Acquisition, (iii) refinance all existing indebtedness of Walter Energy U.S. and Western and their respective subsidiaries, and (iv) provide ongoing working capital to Walter Energy U.S. and its subsidiaries (the "**2011 Credit Agreement**"). Due to its size, the 2011 Credit Agreement and the subsequent amendments are not attached to this Affidavit, but will be made available upon request.

33. As discussed in more detail below in the section titled "The Financial Position of the Walter Group", the Canadian Borrowers only have limited obligations in respect of the 2011 Credit Agreement. As discussed below, the majority of the funding Walter Energy Canada paid for the Western Acquisition was obtained under a hybrid debt transaction.

34. The Western Acquisition closed on April 1, 2011 with the following final consideration:

(a) payment of US$2,107,018,736.90, representing 67% of the total consideration for the transaction; and

(b) 8,951,558 shares of Walter Energy U.S., valued at approximately US$1,224,125,538, representing 33% of the total consideration for the transaction.

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[2] At the time of the Western Acquisition, the Canadian and U.S. dollars were trading near parity.

35. The Western Acquisition was a strategic initiative by Walter Energy U.S. to increase reserves available for future production and create a diverse geographical footprint with strategic access to high-growth steel-producing countries in both the Atlantic and Pacific basins.

36. After the completion of the Western Acquisition, the Walter Group engaged in a series of internal restructurings to rationalize operations and to organize the Walter Group into geographical business segments, the Walter U.S. Group, the Walter Canada Group and the Walter U.K. Group.

III. THE WALTER GROUP'S BUSINESS – THE COAL INDUSTRY

37. The Walter Group is a leading producer and exporter of metallurgical coal for the global steel industry, with mines, mineral reserves and operations in the U.S., Canada and the U.K. There are three types of metallurgical coal: (i) hard coking coal, (ii) semi-soft coking coal, and (iii) pulverized coal injection ("**PCI**") coal. The Walter Canada Group's mines produce hard coking coal and PCI coal.

38. In recent years, the global market for metallurgical coal has sharply contracted. Metallurgical coal markets are influenced by the level of crude steel production, which in turn depends on global economic conditions. Recessionary forces in the global economy reduced global demand for metallurgical coal and resulted in a precipitous decline in its price.

39. The *British Columbia Coal Industry Overviews* for the years 2011 to 2014 (attached hereto as **Exhibit "F"**) explain that, following a historic peak in 2011, prices of hard coking and PCI coal decreased as global inventories increased. The sharp decrease in price from 2011 to 2014 is demonstrated by the table below:

	2011	2012	2013	2014
BC premium hard coking coal	US$220 per tonne	US$175 per tonne	US$155 per tonne	US$121 per tonne
PCI coal	US$144 -180 per tonne	US$144 -180 per tonne	US$125 - $144 per tonne	US$107 per tonne

(All prices estimated West Coast Port Price.)

40. The benchmark price metallurgical coal has dropped dramatically from US$330 per tonne in the second quarter of 2011 to US$89 per tonne in the fourth quarter of 2015.

41. According to Wood Mackenzie's *Global Metallurgical Coal Short-term Outlook* released in September 2015, attached as **Exhibit "G"** to this affidavit, metallurgical coal prices are expected to remain depressed throughout 2015, with a modest recovery expected in early 2016.

42. At current prices, even with the modest recovery Wood Mackenzie predicts in early 2016, the Walter Canada Group anticipates that metallurgical coal production will remain uneconomic for the immediately foreseeable future.

43. Over the last two years, the high cost of coal extraction in northeastern B.C., combined with low metallurgical coal prices and the near-term market outlook caused the Walter Group, including the Walter Canada Group, to focus on containing costs to preserve enterprise value and mitigate the impact of poor market conditions. This strategy included planned reductions in capital spending.

44. In B.C., reductions in capital spending have been achieved by way of idling mines or otherwise curtailing operations. Mining operations at the Walter Canada Group's three mines (Brule, Willow Creek and Wolverine) were curtailed or idled between April 2013 and June 2014 and placed in care and maintenance, all in an effort to reduce costs and minimize losses while the metallurgical coal market remained depressed. Steps have been taken to ensure that the mines can return to production quickly if market conditions warrant. Copies of the press releases announcing the idling of the mines are attached as **Exhibit "H"** to this Affidavit.

45. Idling of the mines has resulted in significant savings for the Walter Non-U.S. Group. Walter Energy U.S. reported a Walter Non-U.S. Group operating loss of US$183.2 million for the year ended December 31, 2014. For the three months ended September 30, 2015, Walter Energy U.S. reported a Walter Non-U.S. Group operating loss of US$2.974 billion. The operating results for the Walter Non-U.S. Group for the nine months ended September 30, 2015 include asset impairment charges of US$2.9 billion to write-down the carrying values of the Canadian and U.K. operations segment to fair value. In the absence of this write-down, the operating loss would have been approximately US$74 million, a significant improvement over the 2014 year that resulted from the idling of the Canadian and U.K. mining operations.

46. The suspension of mining operations was intended to be temporary, and the Walter Canada Group intended to resume operations once existing inventories had been depleted and metallurgical coal prices had recovered. However, the idling of the mines has been prolonged because metallurgical coal prices continue to worsen and there is significant global overcapacity. The Walter Canada Group continues to monitor developments such as the weakening Canadian dollar and declining diesel fuel prices to assess whether and when to resume mining operations. However, these developments are not sufficient at present to warrant a restarting of the Canadian mines. Given the recent developments in the Chapter 11 Cases, the Walter Canada Group does not have sufficient resources to wait and see whether the market for Canadian coal will improve.

47. To successfully restructure, the Walter Canada Group needs to survive the prolonged depressed coal prices with sufficient capital to restart operations. The most viable restructuring option available to the Walter Canada Group at the time of this Affidavit is a sale of the assets pursuant to the CCAA.

IV. THE WALTER CANADA GROUP – MANAGEMENT AND MINES

48. The Walter Group's financial statements report the Walter Non-U.S. Group on a consolidated basis; however, the Walter Canada Group and the Walter U.K. Group are operated separately and there is little overlap between the two corporate groups, other than the fact that the President of Walter Energy Canada is also the President of Energybuild Group Limited, the parent company of all of the U.K. members of the Walter Group.

49. The Canadian mining operations consist of three surface metallurgical coal mines in Northeast B.C.'s coalfields: (i) the Brule Mine, (ii) the Willow Creek Mine, and (iii) the Wolverine Mine, sometimes referred to as the Perry Creek Mine. The Brule and Willow Creek Mines are near Chetwynd, B.C.; the Wolverine Mine is near Tumbler Ridge, B.C.

50. As of December 31, 2014, the Walter Canada Group was estimated to have approximately 133.4 million metric tonnes of recoverable metallurgical coal reserves including 91.3 million metric tonnes at potential future mine sites (including the Walter Canada Group's share of Belcourt Saxon's reserves). As discussed, all the Walter Canada Group mines were idled prior to December 31, 2014, so these estimates are generally unchanged.

51. The Canadian mines are located near existing infrastructure established for the Northeast B.C. coalfields, including rail and road networks that are available year round. Coal produced from the mines is shipped by rail to the Ridley Terminals in Prince Rupert. Active mineral extraction at each of the three mines has been suspended but existing coal inventory was being shipped to Prince Rupert in the third quarter of 2015. For the nine months ended September 30, 2015, a total of 634,000 metric tonnes of coal was sold by the Walter Non-U.S. Group. Only 100,000 metric tonnes was produced. Instead, existing inventory at the Brule and Willow Mine was shipped.

52. A more detailed description of the Canadian operations at each of the mines is set out below.

(A) Brule Mine

53. Brule Coal Partnership ("**Brule Partnership**") operates the Brule Mine, which is located 28 miles south of Chetwynd, B.C. The Brule Mine is an open pit metallurgical coal mine that produces pulverized coal injection coal. PCI coal is generally sold at 15-20% discount to the price of hard coking coal. As of December 31, 2014, the Brule Mine had approximately 16.6 million metric tonnes of recoverable coal reserves. The Brule Mine is expected to have a life of at least 8 years (assuming the applicable permits are renewed or extended), which could be extended depending on how the mine is operated.

54. The Brule Mine does not have a processing plant or a rail load-out facility. Instead, coal from the Brule Mine is transported by truck to the Willow Creek Mine for processing and loading onto rail cars for shipment to Prince Rupert.

55. The dramatic drop in coal prices led the Walter Canada Group to idle the Brule Mine in June 2014. Since that time, the only operations at the Brule Mine were loading the remaining coal and hauling it to the Willow Creek Mine, maintaining the mine and mining equipment, and complying with environmental and other laws and regulations. The final haul of coal from the Brule Mine to Willow Creek occurred on or about April 28, 2015.

56. Idling costs for both the Brule Mine and Willow Creek Mines are estimated to be in excess of $652,000 per month, with some seasonal variation. Idling costs consist of property taxes, expenses related to water and air sampling, reporting to the Ministry of Environment, surveying, geotechnical support, reclamation matters, other environmental monitoring, expenses related to the maintenance of the bioreactor (discussed below), maintenance of the mining machinery and equipment, loss control expenses and labour costs associated with the foregoing. Employment matters at the Brule Mine are described in greater detail below.

57. The Walter Canada Group has experienced some issues meeting the revised provincial water quality guidelines relating to selenium, nitrate and sulphate levels at the Brule Mine. Like many coal mines, the Brule Mine operations have resulted in increased levels of selenium (a natural occurring element) being released into the environment, largely as a result of rain falling on rock exposed through the mining process.

58. The selenium issues at the Brule Mine are more significant than at the Wolverine and Willow Creek Mines, in part because of differences in the local environment and dilution rates of the neighbouring creeks and rivers. The Walter Canada Group is working with the British Columbia Ministry of Environment to address selenium issues at Brule and various selenium management approaches have been considered. This includes, but is not limited to, a biochemical reactor which has been permitted and constructed, and is presently being tested (for the first time in a Northern Canadian mine).

59. The Walter Canada Group estimates that the cost of maintaining the bioreactor through to the end of the first quarter of 2016 will be less than US$150,000. If the bioreactor is successful in meeting its objectives, it is anticipated that two more bioreactors will be established and a third may be constructed. The cost to build each bioreactor is estimated at approximately US$1.0 million. Given the nature of the technology and the local environmental conditions, the Walter Canada Group will not know until August 2016 whether or to what extent the bioreactor assists in achieving the selenium management objectives. If the bioreactor, along with other selenium management steps, is unsuccessful in sufficiently meeting objectives, active treatment of the effluent may be required at some point. Active treatment would be considerably more expensive than the selenium management measures used to date.

(B) Willow Creek Mine

60. Willow Creek Coal Partnership operates the Willow Creek Mine, located 28 miles west of Chetwynd, B.C. It is an open pit metallurgical coal mine with a coal processing plant and a rail load-out facility. The Willow Creek Mine produces metallurgical coal comprised of an estimated one-third hard coking coal and two-thirds low-volatile PCI coal. As of December 31, 2014, the Willow Creek Mine had approximately 16.6 million metric tonnes of recoverable coal reserves. The Willow Creek Mine is currently expected to have an operating life of at least 10 years if running at full production.

61. In April 2013, the decision was made to curtail mining production at the Willow Creek Mine in response to declining coal prices and the excess inventory of PCI coal that had developed at the Brule Mine. The mining footprint was reduced from 110 thousand tonnes per month to 20-30 thousand tonnes per month.

62. Coal prices continued to decline and Willow Creek mining activity was idled in May 2014. The coal processing plant remained in operation until late summer 2015. During this period, the Willow Creek plant was tasked with processing coal from the Brule Mine as well as processing a stockpile of mid-volatile PCI coal that had accumulated at Willow Creek Mine. Processing at the Willow Creek plant includes crushing, sizing and washing coal to remove impurities.

63. Willow Creek completed its processing of the Brule coal and mid-volatile PCI coal in August 2015. At that time, the processing plant was idled and all employees engaged at the processing plant received notice of termination. The rail load-out facility remained in operation until the final shipment of coal from Willow Creek to Ridley Terminals occurred in October 2015. Willow Creek Mine is now fully idled. The only remaining activities at the Willow Creek Mine relate to security, environmental testing and maintenance of on-site facilities.

64. As mentioned above, idling costs for both the Willow Creek Mine and the Brule Mine are estimated to be in excess of $652,000 per month, with some seasonal variation. Idling costs consist of property taxes, expenses related to water and air sampling, reporting to the Ministry of Environment, surveying, geotechnical support, reclamation matters, other environmental monitoring, maintenance of the mining machinery and equipment, loss control expenses and labour costs associated with the foregoing. Employment matters at the Willow Creek Mine are described in greater detail below.

(C) Wolverine (Perry Creek) Mine

65. Wolverine Coal Partnership operates the Wolverine Mine, which is approximately 15 miles south of Tumbler Ridge, B.C. The Wolverine Mine is an open pit metallurgical coal mine with a coal processing plant and a rail load-out facility. The mine produces premium hard coking coal. As of December 31, 2014, the Wolverine Mine had approximately 8.8 million metric tonnes of recoverable coal reserves. It is estimated that the current reserves at the Wolverine Mine have a life of 4 years; however, the Walter

Canada Group has permits for a number of future mine sites near the Wolverine Mine. If these sites are developed, they are expected to have a life of approximately 10 years.

66. Production at Wolverine was idled in May 2014 in response to low coal prices. The only remaining activities at the Wolverine Mine relate to security, environmental testing and maintenance of on-site facilities, including a tailings pond. In the aftermath of the Mount Polley tailings pond failure, tailings ponds are under heightened scrutiny in B.C. The Walter Canada Group has installed a number of additional monitoring sensors and is watching the tailings pond closely. At this time, additional work on the tailings pond is not necessary because the Wolverine Mine is idle; however, further work on the tailings pond is likely necessary before mining at the Wolverine Mine can be restarted.

67. Idling costs for the Wolverine Mine are estimated to be in excess of $515,000 per month, with some seasonal variation. Idling costs consist of property taxes, expenses related to water and air sampling, reporting to the Ministry of Environment, surveying, geotechnical support and reclamation matters, other environmental monitoring, maintenance of the mining machinery and equipment, maintaining the tailings pond, loss control expenses and labour costs associated with the foregoing. Employment matters at the Wolverine Mine are described in greater detail below.

(D) Additional Mine Sites

68. In addition to the three idled mines, the Walter Canada Group owns the right to mine at the following sites in B.C.: Hermann, Mount Spieker, EB, Mink Creek, Hudette, West Brazion, Willow West, Falling Creek, Mink Creek and certain other sites (collectively, the "**Potential Future Sites**"). At present the only activity in relation to the Potential Future Sites relates to maintaining the company's coal licenses for the Potential Future Sites. Some of the coal resources at the Potential Future Sites are not included in the Walter Canada Group's estimated reserves.

(E) Belcourt Saxon Coal Limited Partnership

69. In connection with the Western Acquisition, Walter Energy acquired a 50% interest in the Belcourt Saxon Coal Limited Partnership ("**Belcourt Saxon**"). Belcourt Saxon owns two multi-deposit coal properties located approximately 40 to 80 miles south of the Wolverine Mine in northeast B.C. The other 50% interest in Belcourt Saxon is owned by Peace River Coal Limited Partnership. The Peace River Coal Limited Partnership is a third party not affiliated with the Walter Group. It is affiliated with Anglo American Exploration (Canada) Ltd.

70. The Walter Canada Group's share of the reserves on these properties comprises approximately 28.5 million metric tonnes of recoverable coal. The joint venture was formed for the future exploration and development of surface coal mines. Costs associated with the joint venture were insignificant for the last four years. No field work has been conducted on the Belcourt Saxon properties recently, other than maintenance of environmental monitoring stations and activities relating to maintaining of Belcourt

Saxon's coal licenses. If coal prices rebound, the Belcourt Saxon properties may significantly increase in value.

V. THE WALTER CANADA GROUP – EMPLOYEES

71. There are currently 19 active employees employed by the Walter Canada Group and certain other part time employees are engaged on an as needed basis. These employees include the general mine manager, environmental monitoring staff, engineers, geologists, human resources staff and loss control staff. There are 4 loss control staff assigned to each mine site and the remaining staff support all three mines. None of these staff members are covered by a collective agreement.

72. The Walter Canada Group currently cumulatively employs a total of approximately 315 active and inactive employees in Canada, including approximately 280 inactive, unionized employees employed at the Wolverine Mine and certain employees on disability leave. The inactive Wolverine Mine employees currently on temporary layoff pursuant to the terms of a collective agreement, as further explained below.

(A) Brule Employees

73. No positions at the Brule Mine are covered by a collective agreement.

74. The Brule Mine was idled in June 2014. At the time of idling, there were approximately 200 active employees at Brule. Approximately 150 employees were terminated when the Brule Mine was idled and some additional employees have departed since idling began. There were approximately 40 remaining employees at the Brule Mine who were involved in loading coal onto trucks and certain other maintenance and related work. The majority of the remaining employees were given notice during the week of April 6, 2015, and were terminated on or about May 26, 2015, after all inventory was moved and the necessary steps to idle the remaining equipment were completed. As of the date hereof, these employees have received notice of termination pursuant to the B.C. *Employment Standards Act* (the "**ESA**") and, if applicable, additional severance amounts in respect of common law notice entitlements.

75. The only remaining activities at the Brule Mine relate to security services and ongoing environmental testing and monitoring.

(B) Willow Creek Employees

76. Some employees at the Willow Creek Mine are represented by a union, namely the Christian Labour Association of Canada ("**CLAC**"). The CLAC collective agreement expired November 30, 2014, but its terms continue in effect pursuant to the B.C. *Labour Relations Code*. Key features of the expired CLAC collective agreement include:

(a) a deemed termination and extinguishment of recall rights after 12 months on layoff; and

(b) employee severance of 1 week per completed year of service to a maximum of 10 weeks.

77. In April 2013, the decision was made to curtail mining production at the Willow Creek Mine in response to declining coal prices. Approximately 250 employees were laid off when mining was curtailed. In respect of these employees:

(a) All unionized employees who were laid off received notice of termination and severance pay required under the CLAC collective agreement; and

(b) All non-unionized employees who were terminated received notice of termination pursuant to the ESA and, if applicable, additional severance amounts in respect of common law notice entitlements.

78. The reduced operation at the Willow Creek Mine employed approximately 100 employees in both the mine and the processing plant. The Willow Creek Mine was idled in May 2014, although the coal processing plant continued to operate until August and the load-out facility continued to operate until October. Approximately 70 employees were laid off when the mine was idled and the majority of the remaining employees were laid off when the processing plant and load-out facility were idled in August and October of 2015. In respect of these employees:

(a) All unionized employees who were laid off received notice of termination and severance pay required under the CLAC collective agreement; and

(b) All non-unionized employees who were terminated received notice of termination pursuant to the ESA and, if applicable, additional severance amounts in respect of common law notice entitlements.

79. All processing at the Willow Creek Mine was completed in August and all coal loading was completed in early October 2015. Since that time the plant has been idled. The only remaining activities at the Willow Creek relate to security, environmental testing and maintenance of on-site facilities.

(C) Wolverine Employees

80. Certain positions at the Wolverine Mine are covered by a collective bargaining agreement with the United Steelworkers, Local 1-424 (the "**Steelworkers**"), which expired July 31, 2015. Key features of the Steelworkers collective agreement include:

(a) a deemed termination and extinguishment of recall rights after 24 months on layoff; and

(b) employee severance pay of 2 weeks per completed year of service to a maximum of 10 weeks.

81. The terms continued in effect pursuant to the BC *Labour Relations Code* after July 31, 2015.

82. Mining production at the Wolverine Mine was idled in April 2014 in response to low coal prices. Approximately 425 employees were laid off when the mine was idled; 300 of those employees were unionized. In respect of these employees:

(a) All non-unionized employees who were terminated received notice of termination pursuant to the ESA and, if applicable, additional severance amounts in respect of common law notice entitlements; and

(b) Any unionized employees who have not been recalled retain recall rights until April 2016 when the temporary layoff automatically becomes a termination of employment pursuant to the terms of the Steelworkers collective agreement outlined above.

83. The only remaining activities at the Wolverine Mine relate to security, environmental testing and maintenance of on-site facilities, including a tailings pond.

(D) Existing and Potential Employee and Union Matters

84. The Walter Canada Group is aware of certain current and potential employee and union related matters. The most significant of these relate to the Wolverine Mine. In particular, there is a potential liability that could be as high as $11.3 million relating to unionized employee severance costs that may allegedly arise if the unionized employees at the Wolverine Mine are not recalled to work prior to April 2016, on the date that their employment is deemed to be terminated under the Steelworkers collective agreement. There are a number of other claims that have been raised in respect of the Wolverine Mine employees, including certain claims relating to the Northern Living Allowance and certain claims related to the notice provisions under s. 54 of the B.C. *Labour Relations Code* that are currently subject to an application for judicial review.

VI. THE REAL PROPERTY AND ENVIRONMENTAL AND REGULATORY MATTERS

85. The Walter Canada Group's operations are subject to environmental assessment under the B.C. *Environmental Assessment Act* and its predecessor legislation, the *Mine Development Assessment Act.* Each mine was issued an environmental assessment certificate that sets out the criteria for designing and constructing the project, along with a schedule of commitments the Walter Canada Group has made to address concerns raised through the environmental assessment process. If, for any reason, the Walter Canada Group's operations are not conducted in accordance with the environmental assessment certificate, the Walter Canada Group's operations may be temporarily suspended until such time as its operations are brought back into compliance.

86. Any significant changes to the Walter Canada Group's current operations or further development of its properties in B.C. may trigger a federal or provincial environmental assessment or both.

87. Each of the Walter Canada Group's mining sites were inspected by the British Columbia Ministry of Energy and Mines in September 2014. The Ministry was satisfied with the conditions at the mines.

88. Pursuant to the *Mines Act*, 1996, c. 293 (the "***Mines Act***"), the Walter Canada Group's operations require permits outlining the details of the work at each mine and a program for the conservation of cultural heritage resources and for the protection and reclamation of the land and watercourses affected by the mine. The Chief Inspector of Mines may issue a permit with conditions, including requiring that the owner, agent, manager or permittee give security in an amount and form specified by the Chief Inspector for mine reclamation and to provide for the protection of watercourses and cultural heritage resources affected by the mine. The reclamation security may be applied towards mine closure or reclamation costs and other miscellaneous obligations if permit conditions are not met. Detailed reclamation and closure requirements are contained in the *Health, Safety and Reclamation Code* for Mines in British Columbia (the "***Mine Code***") established under *Mines Act*.

89. Under the *Mines Act* and the *Mine Code*, the Walter Canada Group has filed mine plans and reclamation programs for each of its operations. The Walter Canada Group accrues for reclamation costs to be incurred related to the operation and eventual closure of its mines once they have reached the end of their life. Additionally, under the terms of each mine permit, the Walter Canada Group is required to submit an updated mine plan every five years. The Walter Canada Group submitted updated five-year mine plans for Wolverine Mine and Brule Mine in 2013.

90. Estimates of the Walter Canada Group's total reclamation liabilities are based on permit requirements and its experience with similar activities. As of October 31, 2015, the Walter Canada Group accrued US$57.4 million in respect of its asset retirement obligations for all of the Walter Canada Group's mining operations until the end of the lives of each mine using a net present value calculation. The calculation incorporated estimates of all reclamation costs on the basis that the mines would be in continuous operation until the end of the life of each mine. A separate reclamation estimate was prepared by a third party environmental consultant for the Brule and Wolverine Mines, as a component of the five-year mine plans, on the assumption that the reclamation of the now idled mine sites would occur in the near term (rather than at the end of the life of each mine). On this basis, the environmental consultant has estimated reclamation obligations at approximately $12-14 million per mine. Assuming that Willow Creek reclamation costs are in the same range as the other mines, the total reclamation costs are estimated to be $36-42 million. These reclamation obligation estimates are based upon the five year mine plans that have not yet been approved by the Ministry of Energy and Mines.

91. As of October 2015, the Walter Canada Group had posted letters of credit for post-mining reclamation, as required by its *Mines Act* permits, totaling approximately $22.6 million, consisting principally of:

(a) $3.35 million, pursuant to Mining Permit C-221, in relation to the Brule Mine;

(b) $6 million, pursuant to Mining Permit C-153, as amended on June 9, 2011, in relation to the Willow Creek Mine; and

(c) $11.5 million, pursuant Mining Permit C-223, as amended on April 23, 2012 in relation to the Wolverine Mine (collectively, the "**Mining Permits**").

92. The Mining Permits are non-assignable and non-transferrable unless amended, pursuant to s. 11.1 of the *British Columbia Mines Act*, by way of application to the Chief Inspector or its delegate. The Mining Permits also require the permittee to notify the Chief Inspector of Mines of any intention to depart from either the work plan or reclamation program "to any substantial degree", and to not proceed without written authorization.

93. In addition to the Mining Permits, each of the mining sites has obtained the following types of permits/licenses to operate:

- Environmental Assessment Certificates ("**EACs**");
- Coal leases or licences;
- Various environmental permits including (i) air contaminant discharge permits (due to the dust or fine particulate matter created during the operations), (ii) water permits (due to the need to use or divert water existing on the site for the operations) and (iii) waste / effluent discharge permits (together, "**Environmental Permits**");
- licenses to cut and remove timber and permits to use forestry service roads issued under the *Forestry Act*;
- Explosive storage and handling permits issued under the *Mines Act*; and
- Other land tenures such as statutory right of ways and licenses of occupation.

94. It is imperative that the Walter Canada Group retain all of their EACs, coal leases and licenses, Environmental Permits and other rights throughout the restructuring proceedings to ensure that they can continue to operate and, should conditions prove favourable, ramp up mining at one or more of the Canadian mines. Without the EACs, coal leases and licences, Environmental Permits and other rights described above, the Walter Canada Group is prohibited from undertaking any activity on the site,

including ongoing maintenance and remediation. These rights are also necessary to preserve enterprise value.

95. As of today's date there are no orders outstanding or charges issues for any environmental non-compliance.

VII. THE WALTER CANADA GROUP – OTHER KEY CONTRACTS

Supplier and other contracts

96. The Walter Canada Group also has a number of critical contracts with equipment lessors, mechanics, parts suppliers, road maintenance companies, warehouses, offsite equipment storage and repair and environmental consultants. Each of the partnerships have entered into separate contracts with the applicable suppliers. Because Walter Canada Group's mines are located in an area of British Columbia that is far from a major urban centre, many of the Walter Canada Group's contracts are with the only available supplier of products and services in the area. Continued supply from these vendors will be essential for any proposed restructuring of the Walter Canada Group. For this reason, it is anticipated that certain pre-filing payments will be made to suppliers in accordance with the cash flows that have been reviewed by KPMG Inc. as proposed Monitor ("**KPMG**" or the "**Proposed Monitor**"), which I understand will be attached to the Proposed Monitor's pre-filing report.

Sale of certain equipment to Walter Energy U.S.

97. The Willow Creek Coal Partnership and Brule Coal Partnership (the "**Vendors**") plan to enter into an agreement with Jim Walter Resources, Inc. (a subsidiary of Walter Energy U.S.) (the "**Purchaser**") whereby the Purchaser has agreed to buy three bulldozers from the Vendors for a purchase price of approximately US$1,200,000, plus applicable taxes, and subject to adjustment as described below (the "**Surplus Equipment Transaction**"). The bill of sale for the Surplus Equipment Transaction will be executed in substantially the form attached as **Exhibit "I"** to this Affidavit.

98. The Walter Group, including the Walter Canada Group, has been attempting to sell various pieces of equipment for over a year, including by delivering lists of all of available equipment to selected potential purchasers, such as other mine operators and equipment sales brokers, and posting information regarding the equipment on equipment auctioneer websites.

99. The purchase price contemplated for the Surplus Equipment Transaction is equal to the appraised value of the bulldozers plus the applicable transaction costs. In addition, no commission will be paid out of the purchase price. As such, the net proceeds of the Surplus Equipment Transaction is likely to be higher than the amount realized on a sale to an arm's length party.

100. After the Initial Order is issued, the Proposed Monitor intends to expand upon the marketing process undertaken to date by the Walter Canada Group to sell the bulldozers. If a higher or better offer is not obtained by mid to late December, or, if a higher or better offer is obtained by mid to late December but the Purchaser agrees to match such higher or better offer, then it is proposed that the Proposed Monitor will deliver to the Purchaser a first certificate of the Proposed Monitor stating that the conditions to the sale have been met (the "**First Certificate**"). Among other things, this approach will avoid the need for the Walter Canada Group to schedule a further Court appearance with associated costs.

101. The Surplus Equipment Transaction will provide the Walter Canada Group with some additional funds during the CCAA proceedings. The Proposed Monitor has been consulted regarding the Surplus Equipment Transaction and agrees that it is a fair and reasonable transaction in the circumstances, subject to the efforts described above to be undertaken subsequently to see if a higher or better offer can be obtained.

102. This transaction will provide the Purchaser with assets necessary to the operation of its businesses and it will allow the Vendors to sell assets that are not presently needed, due to the idling of their operations. In addition, the transaction may be beneficial for U.S. federal income taxes for Walter Energy U.S., the parent of the Purchaser, and potentially, for the acquiror of substantially all of the Purchaser's assets (which assets may include those sold by the Vendors) through a sale in the Chapter 11 Cases.

103. It is contemplated that the purchase price will be paid within 60 days of the date of bill of sale. The payment terms are intended to reflect standard commercial practice in the industry and are necessary given the present constraints on the Purchaser's liquidity resulting from the Chapter 11 Cases. The payment terms have been agreed to by both parties and the Vendors are taking steps to ensure the purchase price is paid, including through protections proposed in the Initial Order

104. The Walter Canada Group will be seeking a provision in the Initial Order approving the Surplus Equipment Transaction and vesting title to the equipment in the Purchaser upon delivery of the First Certificate free and clear of any liens or encumbrances on such equipment except for the Equipment Charge (defined below). Any such liens are proposed to attach to the proceeds of the sale in the same manner and with the same priority as such liens had with respect to the equipment to be sold. In addition, the Walter Canada Group has taken a security interest in the equipment sold and will remain in possession of the equipment until the purchase price is paid in full.

105. To further secure the Purchaser's payment of the purchase price to the Vendors, the Walter Canada Group is also seeking a Court-ordered first-ranking charge on the equipment sold (the "**Equipment Charge**") so that the Walter Canada Group will be paid in priority to any creditor of the Purchaser. Once the purchase price is paid, it is proposed that the Equipment Charge will be extinguished automatically upon delivery of a second certificate of the Proposed Monitor certifying that

payment has been made. The Vendors are also seeking an order that ownership of the equipment will revert to the Vendors if the purchase price is not paid within 90 days of the date of the Initial Order.

VIII. THE FINANCIAL POSITION OF THE WALTER GROUP

106. As a publicly traded company, Walter Energy U.S. files consolidated financial statements with the Securities and Exchange Commission in the United States reflecting the financial position of the Walter Group. These financial statements include the consolidated results of U.S., U.K. and Canadian operations. A copy of the audited consolidated financial statements for the Walter Group for the fiscal year-ended December 31, 2014 is attached as **Exhibit "J"** to this Affidavit. A copy of each of the Walter Group's interim financial statements for the first, second and third quarters of 2015 are attached as **Exhibit "K"** to this Affidavit. These include the Walter Group's most recently filed interim financial statements from the third quarter of 2015, published on November 5, 2015. The Walter Group does not prepare stand-alone financial statements for the Canadian operations, but does provide details for its operating segments, the Walter U.S. Group and the Walter Non-U.S. Group .

(A) Financial Position of the Walter Non-U.S. Group

107. The financial statements show that revenue for the Walter Non-U.S. Group has declined in every year since 2011. The 2011 revenue figure was US$698 million; it decreased to US$668 million in 2012, US$527 million in 2013 and US$237 million in 2014. The Walter Non-U.S. Group's declining revenue is a result of the declining price of coal and the idling of the mines.

108. The financial statements also show declining sales of coal by the members of the Walter Non-U.S. Group. These declining sales are consistent with the idled state of all of the mines of the Walter Non-U.S. Group.

(B) Summary of Walter Canada Assets, Liabilities and Revenue

109. The Walter Canada Group prepares segment-specific balance sheets. Comprehensive details of the financial position of the Walter Canada Group are available in its balance sheets of December 2014, March 2015, September 2015 and October 2015 (the "**Balance Sheets**"), attached as **Exhibit "L"** to this affidavit.

110. The Balance Sheets show that in October 2015, the Walter Canada Group had assets totalling $379 million, a decrease from the December 2014 figure of $3.368 billion. The significant reduction in the value of the Walter Canada Group's assets is a result of the write-down taken earlier in 2015 and more fully described in paragraph 45. The value of the Walter Canada Group's assets as set out in the October 2015 balance sheet is comprised of the following:

(a) *Current Assets*: US$66 million, of which US$26.9 million is in cash or cash equivalents, US$8 million is coal inventory attributable to the Walter Canada Group's stockpiled coal inventory at all three mines, and US$20.8 million in supplies inventory; and

(b) *Long Term Assets:* US$312.9 million, of which US$75.4 million is in property, plant and equipment.

111. The Balance Sheets show that in October 2015, the Walter Canada Group had liabilities totalling US$68.2 million, a decrease from the December 2014 figure of $752 million, primarily due to a reduction in deferred tax liabilities. These amounts do not include the Walter Canada Group's liabilities in relation to undrawn letters of credit, but do include the following:

(a) *Current Liabilities*: US$19.5 million; and

(b) *Long Term Liabilities:* US$48.7 million.

112. The balance sheets also indicate a receivable of approximately $16 million in respect of coal sold by the Brule Coal Partnership. This receivable has been paid and Brule Coal Partnership is holding the funds received.

113. The net cash position of the principal members of the Walter Canada Group as of December 1, 2015 was as follows: (i) Walter Energy Canada held approximately $1.1 million, (ii) Brule Coal Partnership held approximately US$29.4 million, (iii) Willow Creek Coal Partnership held approximately US$3 million, (iv) Wolverine Coal Partnership held approximately US$5 million, and (v) Walter Canadian Coal Partnership held approximately $3.2 million. All of the accounts, other than the Walter Energy Canada account, are held in the name of Walter Canadian Coal Partnership for the other partnerships and are subject to the Cash Management System defined and described below.

114. The unlimited liability companies that are members of the Walter Canada Group are fully liable for the debts of the respective partnerships, hold a .01% interest in such respective partnership and have very limited cash. In addition, Pine Valley Coal Ltd. and 0541237 B.C. Ltd. have legal rights to certain mineral licenses, but have no other assets. They require funding from the other members of the Walter Canada Group to maintain the mineral licenses in good standing. I do verily believe that these entities are therefore insolvent.

(C) Cash Management System

115. The Walter Canada Group uses an account network at BNS. Each of Walter Canadian Coal Partnership, Brule Partnership, Willow Creek Partnership and Wolverine Partnership maintains a Canadian dollar and a U.S. dollar account with BNS. Certain customary pooling arrangements have been established with respect to all of these accounts. Under these pooling arrangements, BNS permits certain

of the accounts to have a negative dollar balance without applying its overdraft policy so long as the balance in all of the accounts, on a net basis, is positive. The accounts of the different partnerships are not consolidated. Funds are transferred from one partnership account to another quarterly and on certain other occasions to establish a positive balance in each account. Certain intercompany receivables are booked in relation to these transfers and these receivables are generally capitalized at year end such that the transfers are ultimately treated as partnership distributions made by certain partnerships to Walter Canadian Coal Partnership and as capital contributions made by Walter Canadian Coal Partnership to other partnerships. In addition, payments are made to the Walter Canadian Coal Partnership account in respect of each partnerships' share of certain shared services, royalty agreements and other transactions in the ordinary course of business. This system is referred to as the "**Cash Management System**". All bank accounts are located in Canada, but are generally managed by Walter Energy U.S., including by officers of Walter Energy Canada who are also employees of Walter Energy U.S. Walter Energy U.S. is responsible for the receipt and management of the vast majority of accounts receivable and for the disbursement of the vast majority of accounts payable incurred by the Walter Canada Group.

116. The Walter Canada Group is seeking certain enhanced powers of the Proposed Monitor in connection with the Cash Management System as more fully set out below.

(D) Secured Debt & Credit Facility

117. As described above, on April 1, 2011, Walter Energy U.S., Western Coal Corp. and Walter Energy Canada entered into the 2011 Credit Agreement to partially fund the acquisition of Western and to pay off all outstanding loans. The lenders consisted of various financial institutions who comprise the Bank Lenders. Morgan Stanley Senior Funding, Inc. acts as administrative agent and collateral agent.

118. The 2011 Credit Agreement includes the US$150 million multi-currency Canadian Revolver available to Walter Energy Canada. The Canadian Revolver provides for operational needs and letters of credit.

119. Amounts outstanding on the Canadian Revolver consist primarily of obligations in respect of issued but undrawn letters of credit. The Walter Canada Group is liable for approximately $22.6 million of undrawn letters of credit issued by BNS pursuant to the 2011 Credit Agreement.

120. The members of the Walter Non-U.S. Group, including Walter Energy Canada, are not liable for and have not guaranteed Walter Energy U.S.' obligations under the 2011 Credit Agreement or any of its other major financial obligations. Walter Energy Canada and the other members of the Walter Canada Group only have obligations to the Bank Lenders in respect of the obligations of Walter Energy Canada and Western Coal Corp. under the Canadian Revolver, namely the letters of credit.

121. With respect to the obligations of Walter Energy Canada under the Canadian Revolver, such obligations are secured by a first priority lien and security interest in all of the following, whether owned on the closing date or thereafter acquired:

(a) All equity interests of (or other ownership interests in), and intercompany debt of, the entities owned by Walter Energy Canada;

(b) All present and future tangible and intangible assets of Walter Energy Canada, including but not limited to, machinery and equipment, inventory and other goods, accounts receivable, owned and leased real property, leases on mines, fixtures, deposit accounts, general intangibles, intercompany debt, license rights, intellectual property, chattel paper, insurance policies, contract rights, hedge agreements, documents, instruments, indemnification rights, mineral rights, tax refunds, investment property and cash, wherever located, subject to exceptions and thresholds to be agreed; and

(c) All proceeds and products of the property and assets described in clauses (a) and (b) above.

122. Walter Energy Canada's obligations under the 2011 Credit Agreement are guaranteed by each of the members of the Walter Canada Group other than Belcourt Saxon Coal Ltd. and Belcourt Saxon Limited Partnership. These guarantees are secured by a security interest in all of the present and after-acquired property of the members of the Walter Canada Group who are guarantors.

123. On April 1, 2011, Walter Energy Canada and Walter Canadian Coal Partnership and certain other Canadian subsidiaries of Walter Energy U.S. (the "**Canadian Guarantors**") and the Collateral Agent entered into the Canadian Guaranty and Collateral Agreement, which was amended and restated in its entirety on July 31, 2012 (such amended and restated agreement and additional documents and ancillary agreements, as amended and supplemented from time to time, the "**Canadian Guaranty and Collateral Agreement**"). A copy of the Canadian Guaranty and Collateral Agreement is attached as **Exhibit "M"** to this Affidavit. A list of the Canadian Guarantors is attached as **Exhibit "N"**.

124. The security interests granted to the Collateral Agent pursuant to the Canadian Guaranty and Collateral Agreement are perfected by registrations made in the B.C. Personal Property Registry. Attached hereto as **Exhibit "O"** is a true copy of the search results from the B.C. Personal Property Registry with respect to the Walter Canada Group dated October 21, 2015.

125. Pursuant to the Canadian Guaranty and Collateral Agreement, each of Walter Energy Canada and Western Coal Corp. and the Canadian Guarantors jointly and severally, unconditionally and irrevocably, guaranteed to the Collateral Agent, for the benefit of the Bank Lenders, the prompt and complete payment and performance when due of all of the obligations of each of the Canadian Borrowers

and Canadian Guarantors, which comprise the Canadian Revolver and related obligations (the "**Canadian Obligations**").

126. The 2011 Credit Agreement contains customary events of default and covenants, including among other things, covenants that restrict Walter Energy U.S. and its subsidiaries' ability to incur certain additional indebtedness, create or permit liens on assets, pay dividends and repurchase stock, engage in mergers or acquisitions, and make investments and loans. The 2011 Credit Agreement also includes certain financial covenants that must be maintained. Walter Energy U.S. is in default of its obligations under the 2011 Credit Agreement, including due to the commencement of the Chapter 11 Cases. The Bank Lenders may have a right to declare that Walter Energy Canada is in default of the 2011 Credit Agreement as well.

127. In addition, Walter Energy U.S. and the U.S. Guarantors have guaranteed, on a secured basis, the Canadian Obligations pursuant to the U.S. Guaranty and Collateral Agreement between the members of the Walter U.S. Group more fully described therein and Morgan Stanley Senior Funding, Inc., as Collateral Agent.

128. The B.C. Personal Property Registry search results also indicate that certain other creditors have perfected security interests against members of the Walter Canada Group, generally in respect of purchase money security interests in certain equipment. However, at this time there are no further amounts owing to these former creditors in respect of any of the equipment other than in relation to one vehicle.

(E) The Hybrid Debt Structure

129. In connection with the Western Acquisition, Walter Energy Canada borrowed approximately US$2 billion from Walter Energy U.S. and issued a promissory note (the "**Note**") to Walter Energy U.S. in respect of such indebtedness and pledged the Subscription Agreement (defined below) to secure repayment of the Note. The funds advanced were used to acquire Western. Interest on the Note is payable in cash or in common shares of Walter Energy Canada.

130. The Note was issued as part of a series of transactions entered into by Walter Energy U.S., Walter Energy Canada and Walter Energy Holdings, LLC ("**LLC**"), a wholly owned subsidiary of Walter Energy U.S., to maximize tax efficiencies. In addition to the Note, LLC entered into a subscription agreement with Walter Energy Canada (the "**Subscription Agreement**"), pursuant to which LLC agreed to subscribe for new common shares of Walter Energy Canada on the maturity of the Note for cash equal to the aggregate principal amount of the Note. Walter Energy U.S. also entered into a capital support agreement with LLC (the "**Capital Support Agreement**") in which Walter Energy U.S. agreed to purchase shares of LLC with cash or by contribution of the Note to assist LLC to meet LLC's obligations under the Subscription Agreement. Walter Energy U.S. also gave Walter Energy Canada a guarantee of LLC's

obligations under the Subscription Agreement (the "**Guarantee**"). The Subscription Agreement, the Capital Support Agreement and the Guarantee are described collectively as the "**Hybrid Debt Structure**".

IX. IMPACT OF THE CHAPTER 11 CASES ON THE WALTER CANADA GROUP

131. As discussed above, the U.S. Petitioners are subject to the Cash Collateral Order. The Cash Collateral Order imposes certain restrictions on the activities of the U.S. Petitioners and their affiliates that apply so long as the U.S. Petitioners need to make use of the cash collateral. Although the Walter Canada Group is not subject to the Cash Collateral Order, it nevertheless imposes certain restrictions on the Walter Canada Group.

132. In addition, the Cash Collateral Order requires the Walter Canada Group to obtain the consent of the Steering Committee before:

(a) commencing a sale process or disposing of any material assets;

(b) commencing any insolvency proceedings;

(c) or incurring any new secured or unsecured debt outside the ordinary course of business, unless such debt (i) was to a member of the Walter U.S. Group, (ii) was guaranteed by all members of the Walter Canada Group, and (iii) such loans and guarantees were secured by liens on all present and future property of the Walter Canada Group pursuant to loan documents and security agreements in form and substance satisfactory to the Majority Lenders and assigned to the Majority Lenders.

133. The Steering Committee has been consulted and have not objected to this petition seeking relief under the CCAA.

134. In addition, PJT Partners Inc. has been canvasing the market in an attempt to find a purchaser for the assets of the Walter Canada Group. PJT Partners Inc., formerly a part of Blackstone Advisory Partners L.P., has been engaged by counsel to Walter Energy U.S. as its financial advisor to assist the Walter Group with its restructuring. It is anticipated that, after appropriate consultation with governmental authorities, the Canadian Petitioners will seek approval of a sales process in these CCAA proceedings to be run by PJT Partners Inc. At the time such approval is sought, it is anticipated that the Canadian Petitioners will also seek the approval of an engagement letter to be entered into by certain of the Walter Canada Group and PJT Partners Inc.

X. THE NEED FOR RELIEF UNDER THE CCAA AND RELIEF SOUGHT

135. As discussed above, the Walter Canada Group has idled its three mines and has sold all of its remaining saleable coal inventory stockpiled at those mines. As a result, the Walter Canada Group is not

producing coal and is not generating revenue. The Walter Canada's Group's survival depends on having sufficient capital to maintain and then restart the mines when coal prices improve.

136. The Walter Canada Group has a finite amount of funding. The annual costs associated with idling the Canadian mines are in excess of $16 million. In addition, significant working capital investments would be required before any of the Canadian mining operations can be restarted and the Walter Canada Group faces a number of claims that may deplete its remaining funds.

137. The Walter Canada Group also has aggregate, long-term secured liabilities under the 2011 Credit Agreement in excess of $22.6 million with the associated annual fees and interest expenses, primarily in connection with the issuance of letters of credit to secure the Walter Canada Group's environmental and other obligations.

138. Furthermore, in March 2015, the B.C. Ministry of Finance issued notices of assessment in relation to the Brule Mine. The Walter Canada Group is obligated to pay the B.C. Ministry of Finance $6,373,623, an amount owing in relation to a BC Mineral Tax audit for the 2005-2008 tax periods. The Walter Canada Group has negotiated a payment plan with the B.C. Ministry of Finance. There is approximately $1 million outstanding in respect of this payment plan. In addition, the years of 2010 and 2011 are currently being assessed and the result of the assessment could give rise to an additional mineral tax liability for the Walter Canada Group.

139. Based on known obligations and not considering contingent or potential claims, the Walter Canada Group does not have sufficient funding to restart the mines. The Walter Canada Group intended to rely on financial support from Walter Energy U.S. to restart the Canadian mines when warranted by market conditions. In light of the status of the Chapter 11 Cases, including the U.S. APA and bid procedures approved in the Chapter 11 Cases, the Walter Canada Group has been advised that it will not be able to rely on Walter Energy U.S. for financial support going forward or for essential management services after the sale contemplated by the U.S. APA is complete. If the Walter Canada Group cannot rely on its parent for financial support or for essential management services, it will not be able to restart the Canadian mines without additional financing.

140. At this time, the available liquid assets of the Walter Canada Group plus the aggregate, realizable value of the Walter Canada Group's other assets, property and undertaking, if sold in an expedited fashion in current market conditions, is not sufficient to enable the members of the Walter Canada Group to pay their obligations that are due or will become due during the period necessary for the Walter Canada Group to determine its path forward and to put that plan into effect unless the Walter Canada Group has the benefit of the relief sought under the CCAA, including a stay of proceedings. It certainly is not sufficient to restart the mines from care and maintenance to permit the Walter Canada Group to begin generating revenue. Accordingly, the Walter Canada Group faces a looming liquidity crisis and, absent protection under the CCAA, will exhaust its remaining cash within six months.

141. Accordingly, it is essential that the Canadian Petitioners are granted CCAA protection forthwith and have the relief extended to the other members of the Walter Canada Group in order to stabilize their affairs, commence discussions with stakeholders and seek a going concern outcome while they still have sufficient liquidity available.

142. If the Walter Canada Group is to restructure, among other things, the Walter Canada Group must de-integrate its management and operations from the Walter U.S. Group and work with applicable governmental authorities to establish an independent sales process to maximize value for the stakeholders of the Walter Canada Group before it is too late to do so. If no buyer can be found within a relatively short time frame, it will be necessary for the Walter Canada Group to permanently cease operations.

143. The members of the Walter Canada Group and their boards of directors have considered the circumstances and the alternatives available to the Walter Canada Group. In exercise of their business judgement, they have determined that the filing by the Walter Canada Group for protection under the CCAA is necessary at this time and the pursuit of the restructuring is in the best interests of the Walter Canada Group.

(A) Stay of Proceedings and Partnerships

144. The Walter Canada Group is concerned that, in light of declining revenues and the current liquidity challenges at the Canadian entity level, an uncontrolled material adverse change to the Walter Canada Group's business would precipitate a quick and significant erosion in enterprise value to the detriment of all stakeholders. The Walter Canada Group therefore requires a stay of proceedings and the "breathing space" created by a stay of proceedings to restructure their affairs.

145. In particular, the Walter Canada Group requires a stay of proceedings to manage the impact of the known potential claims, including employee claims at the Wolverine Mine, the possible assessment of mineral taxes for the 2010 and 2011 taxation year and the potential need for further security requested in respect of environmental claims. The effect of such claims, if not carefully managed, would likely result in the abrupt cessation of operations for the Walter Canada and would make it impossible to re-start the mines at any time in the future. The Walter Canada Group is requesting an initial stay of proceedings for the 30 days following the filing date to allow the Walter Canada Group sufficient time to engage with its stakeholders and in particular with applicable government authorities to determine whether there is a path forward to a going concern sale.

146. The Petitioners also seek to have a stay of proceedings and other benefits of an Initial Order under the CCAA extended to the Walter Canadian Coal Partnership, the Brule Coal Partnership, the Willow Creek Partnership and the Wolverine Coal Partnership. As discussed above, the partnerships

carry on operations integral to the business of the Walter Canada Group and are the principal vehicles through which the mines are operated.

147. In addition, the Petitioners seek to have a stay of proceedings extended to Belcourt Saxon Coal Ltd. for the limited purpose of preventing any action that may be taken under the Belcourt Saxon Coal Limited Partnership Agreement of March 2, 2005 to remove it as general partner of Belcourt Saxon Coal Limited Partnership or to force a sale to any particular person of the Walter Canada Group's interest in Belcourt Saxon Coal Limited Partnership, including as a result of any of the Charges being sought by the Walter Canada Group, any offers received during the CCAA proceedings or any other matters that may arise as a result of the insolvency of the Walter Canada Group.

(B) Payments During this CCAA Proceeding in Respect of Pre-Filing Obligations

148. During the course of these CCAA proceedings, the Walter Canada Group intends to make payments for goods and services supplied post-filing in the ordinary course and to make a limited number of pre-filing payments to suppliers that are critical , as set out in the cash flow projections prepared by the Walter Canada Group and reviewed by the Proposed Monitor and as permitted in the Initial Order.

(C) Management Services Provided by Walter Energy U.S.

149. Walter Energy U.S. and its subsidiaries provide a variety of shared services to the Walter Canada Group, including services pursuant to certain management agreements and other intercompany agreements (collectively, the "**Shared Services**"). Given the importance of these Shared Services to the Walter Canada Group's operations, the expertise and experience of Walter U.S. Group and the significant extent to which the Walter Canada Group relies on the Walter U.S. Group to provide these essential services, the Walter Canada Group will continue paying the Walter U.S. Group during the CCAA proceeding on a basis consistent with current payment terms and business practices but subject to certain changes to reflect the present set of services needed by the Walter Canada Group. The Walter U.S. Group has confirmed that it intends to continue providing Shared Services until the closing of the transaction contemplated by the U.S. APA or another sale under section 363 of the U.S. Bankruptcy Code to be completed in the Chapter 11 Cases. The Walter Canada Group will immediately commence steps to reduce and eliminate the need for the full slate of Shared Services, with the goal of ensuring that the Walter Canada Group can be fully independent of Walter Energy U.S. and the other members of the Walter U.S. Group before the U.S. APA or another sale closes.

(D) Proposed Monitor

150. The Walter Canada Group is seeking the appointment of KPMG as the Monitor in these proceedings. KPMG is a qualified financial restructuring firm and has consented to act as the Monitor. A copy of its consent is attached at **Exhibit "P"**. As discussed in paragraph 151, certain enhanced powers are requested for the Proposed Monitor.

151. The proposed Initial Order contemplates an enhanced role for the Proposed Monitor, including overseeing the Cash Management System and all receipts and disbursements in relation to the Walter Canada Group's accounts, assisting the Walter Canada Group in the preparation of cash flow statements, participating in any discussions or consultations with the Walter Canada Group's stakeholders, including unions and governmental authorities. In addition, due to the Walter Canada Group's intention to de-integrate from the Walter U.S. Group, the Proposed Monitor should be authorized to the review and monitor the provision of and payment for all Shared Services, assist the Walter Canada Group in negotiations with Walter Energy, Inc. and its affiliates regarding changes to existing Shared Services arrangements and assist the Walter Canada Group in developing alternatives to the Shared Services, including with respect to sourcing new service providers with respect to any or all services that are currently Shared Services, in each case in such manner as the Proposed Monitor, in consultation with the Walter Canada Group, consider appropriate and the proposed sale process to be commenced in respect of the Walter Canada Group if such consultation is successful. It is also contemplated that the Proposed Monitor have the ability to cause the members of the Walter Canada Group to initiate bankruptcy proceedings in circumstances where they are unable to do so on their own behalf.

(E) Charges and other Protections

Administration Charge

152. It is proposed that the Proposed Monitor, its counsel and the Petitioners' counsel be granted a court-ordered charge on the assets of the Walter Canada Group as security for their fees and disbursements relating to services rendered in respect of the Walter Canada Group (collectively, the "**Administration Charge**"). The Administration Charge is not to exceed an aggregate of $2.5 million. The Administration Charge would have first priority over all other charges.

153. All of the beneficiaries of the Administration Charge have contributed, and continue to contribute, to the restructuring of the Walter Canada Group. The Walter Canada Group has sought to ensure that there is no unwarranted duplication of roles so as to minimize the professional fees associated with the restructuring.

Directors' and Officers' Charge

154. A successful restructuring of the Walter Canada Group will only be possible with the continued participation in the near term of the Walter Canada Group's directors and officers. These personnel are essential to the viability of the Walter Canada Group's continuing business.

155. I am advised by legal counsel for the Walter Canada Group, and do verily believe that, in certain circumstances, directors and officers can be held liable for certain obligations of a company owing to employees and government entities. The Walter Canada Group estimates, with the assistance of the Proposed Monitor, that the obligations in respect of unpaid accrued wages, unremitted source reductions,

unpaid accrued vacation pay and certain taxes could amount to a total potential director liability of approximately $2.5 million.

156. The Walter U.S. Group maintains a directors' and officers' insurance policy that also provides coverage to the directors and officers of the Walter Canada Group. The primary limit of this insurance is $10 million, the excess limits total $90 million, and there is an additional $50 million of coverage for certain specified liabilities. The directors' and officers' insurance policy is scheduled to expire on July 1, 2016. The Walter U.S. Group has purchased run off coverage for a period of 6 years after the expiration of the directors' and officers' insurance policy. In addition, the Walter U.S. Group maintains certain other insurance policies for the benefit of the directors and officers of the Walter Group.

157. The remaining directors and officers have indicated that, in light of the uncertainty surrounding limits and exclusions in directors' and officers' insurance, their continued service and involvement in this restructuring is conditional upon the granting of an Order under the CCAA which grants a charge in favour of the directors and officers of the Walter Group in the amount of $2.5 million on the property of the Walter Canada Group (the "**Directors' Charge**"). The Directors' Charge will be subordinate to the proposed Administration Charge. The Directors' Charge would act as security for indemnification obligations for the Walter Group Directors' potential liabilities as set out above.

158. The Directors' Charge is necessary so that the Walter Canada Group may benefit from its directors' and officers' experience with the business and the metallurgical coal mining industry and so that its directors and officers can guide the Company's restructuring efforts.

159. In addition, it is proposed that the directors and officers receive the benefit of a stay of proceedings and that this Court order that the directors and officers not be liable for any losses, claims or damages of any nature or kind except to the extent that such losses, claims or damages result from gross negligence or wilful misconduct on the part of such director or officer.

(F) Cash Flow Forecast

160. I am advised by the Proposed Monitor that cash flow projections demonstrate that the Walter Canada Group can continue going concern operations during the proposed stay period. A copy of the 13-week cash flow projections, as prepared by the Walter Group with the assistance of its financial advisors and the Proposed Monitor, is attached to the Proposed Monitor's pre-filing report.

XI. CONCLUSION

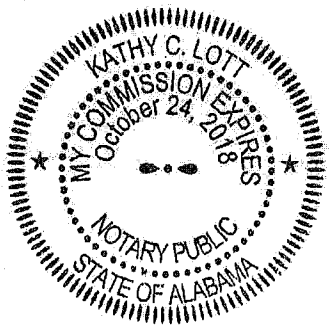
161. The Walter Canada Group, like many other North American coal producers, is facing financial difficulties due to the prolonged depression in coal prices. The Walter Canada Group managed its business with due diligence by idling its mines and seeking to position itself to have sufficient capital to restart its mines when coal prices rebound. The developments in Chapter 11 Cases, and specifically the

U.S. APA which would eliminate the Walter Canada Group's access to the funding necessary to restart the Mines, have necessitated this petition for relief under the CCAA. The Walter Canada Group seeks the protection of the stay of proceedings under the CCAA to develop a path to a going concern outcome that will protect the Walter Canada Group's stakeholders, creditors, employees, suppliers and the environment. If a going concern outcome is not possible, then the Walter Canada Group will be forced to wind down operations and seeks the breathing space in which to do so.

SWORN BEFORE ME at Birmingham, Alabama, United States, on December 4th, 2015.

Kathy C. Lott

A Notary Public in the State of Alabama



W.G. Harvey

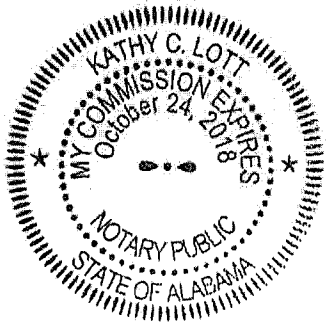
WILLIAM G. HARVEY

TAB 9A

This is Exhibit **"A"** referred to in Affidavit #1 of **William G. Harvey** sworn December 4, 2015 at Birmingham, Alabama, United States.

Kathy C. Lott

A Notary Public in the State of Alabama



PETITIONERS

1. Walter Energy Canada Holdings, Inc.
2. Walter Canadian Coal ULC
3. Wolverine Coal ULC
4. Brule Coal ULC
5. Cambrian Energybuild Holdings ULC
6. Willow Creek Coal ULC
7. Pine Valley Coal, Ltd.
8. 0541237 BC, Ltd.

PARTNERSHIPS

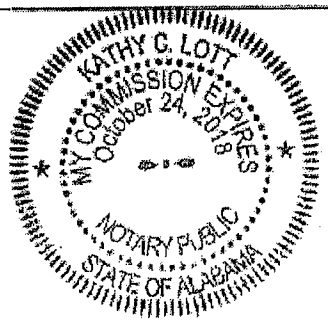
1. Willow Creek Coal Partnership
2. Walter Canadian Coal Partnership
3. Wolverine Coal Partnership
4. Brule Coal Partnership

TAB 9C

This is Exhibit **"C"** referred to in Affidavit #1 of **William G. Harvey** sworn December 4, 2015 at Birmingham, Alabama, United States.

Kathy C. Lott

A Notary Public in the State of Alabama



MEMBERS OF THE WALTER U.S. GROUP GRANTED CHAPTER 11 PROTECTION

Atlantic Development and Capital, LLC

Atlantic Leaseco, LLC

Blue Creek Coal Sales, Inc.

Blue Creek Energy, Inc.

J.W. Walter, Inc.

Jefferson Warrior Railroad Company, Inc.

Jim Walter Homes, LLC

Jim Walter Resources, Inc.

Maple Coal Co., LLC

Sloss-Sheffield Steel & Iron Company

SP Machine, Inc.

Taft Coal Sales & Associates, Inc.

Tusacaloosa Resources, Inc.

V Manufacturing Company

Walter Black Warrior Basin LLC

Walter Coke, Inc.

Walter Energy Holdings, LLC

Walter Energy, Inc.

Walter Exploration & Production LLC

Walter Home Improvement, Inc.

Walter Land Company

Walter Minerals, Inc.

Walter Natural Gas, LLC

TAB 10

This is the 1st Affidavit of
William E. Aziz in this case and
was made on March 22, 2016

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 A PLAN OF COMPROMISE OR ARRANGEMENT OF
WALTER ENERGY CANADA HOLDINGS, INC. AND THE OTHER
PETITIONERS LISTED ON SCHEDULE "A"

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 by Walter Energy Canada Holdings, Inc. ("**Walter Energy Canada**") to provide my services as Chief Restructuring Officer ("**CRO**") to Walter Energy Canada, its direct and indirect subsidiaries and affiliates listed on Schedule "A" (collectively with Walter Energy Canada, the "**Canadian Petitioners**") and the partnerships listed on Schedule "C" to the Order of this Honourable Court made on December 7, 2015 (the "**Initial Order**") (collectively with the Canadian Petitioners, the "**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 Canadian Petitioners for an Order under the *Companies' Creditors Arrangement Act*, 1985, c. C-36, as amended (the "**CCAA**"):

(a) Extending the stay of proceedings in respect of the Walter Canada Group to June 30, 2016; and

(b) Amending paragraph 20 of the Order pronounced on January 5, 2016 by the Honourable Madam Justice Fitzpatrick (the "**January 5th Order**") to strike out the words ""with respect to any letter of credit obligation".

3. I was retained pursuant to an engagement letter dated December 30, 2015 (the "**BlueTree Engagement Letter**"), as amended in response to certain requests made by Walter Canada Group stakeholders. BlueTree was appointed as CRO of the Walter Canada Group pursuant to paragraph 9 of the January 5th Order.

4. As the CRO of the Walter Canada Group, in accordance with the January 5th Order, I have the authority to direct the Walter Canada Group's Sales and Investment Solicitation Process ("**SISP**"), to engage in consultation and negotiation with stakeholders regarding the SISP, and to engage in such other matters as are set out in the BlueTree Engagement Letter.

5. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the SISP, the January 5th Order, the first affidavit of William G. Harvey, sworn December 4, 2015 (the "**First Harvey Affidavit**") and the other pleadings filed herein.

6. The information in this affidavit is arranged under the following headings:

I. UPDATE REGARDING SISP

7. The Walter Canada Group's financial advisor, PJT Partners LP, began canvassing the market in an attempt to find a purchaser for the assets of the Walter Canada Group prior to the CCAA filing,

including as part of its broad canvasing of the market in respect of all the assets of the Walter Group in relation to the Chapter 11 proceedings underway in respect of certain members of the Walter U.S. Group.

8. The SISP was approved pursuant to paragraph 14 of the January 5th Order.

9. The SISP provides for Prospective Bidders to submit an LOI or a Bid involving an Investment Proposal and/or a Sale Proposal.

10. In accordance with the terms of the SISP, PJT Partners LP launched Phase 1 of the SISP on January 18, 2016 by sending a teaser letter and a draft non-disclosure agreement ("**NDA**") to interested parties to solicit indications of interest in the business and assets of the Walter Canada Group in the form of non-binding letters of intent from various potential bidders. PJT Partners LP has contacted numerous parties, including financial buyers and strategic buyers based in Canada, the United States and internationally. Financial buyers were selected based on their past experience in the mining sector, previous investments in turnaround situations and ability and willingness to deploy capital quickly. Strategic buyers included companies in the mining sector and the steel sector.

11. The Walter Canada Group, its counsel, the Monitor and I have also been involved in soliciting known potential bidders and other potentially interested parties. In addition, a number of inbound requests for information were received from persons who learned of the SISP through the advertisements posted or from other sources. When other interested parties were identified, PJT Partners LP provided such interested parties with copies of the teaser letter and an NDA.

12. A number of the parties who were contacted executed NDAs and received the Walter Canada Group's confidential information memorandum and access to the virtual data room to conduct due diligence on the Walter Canada Group. Certain interested parties also conducted site visits prior to the Phase 1 LOI Bid Deadline.

13. The Phase 1 LOI Deadline was March 18, 2016. On or before the Phase 1 LOI Deadline, the Walter Canada Group received a number of LOIs. In accordance with the SISP, I am reviewing the LOIs with PJT Partners LP and the Monitor to determine whether such LOIs are or should be deemed to be Qualified LOIs. PJT Partners LP and I intend to have discussions with certain of the bidders to clarify aspects of their LOIs in order to determine whether there is a reasonable prospect of obtaining a binding Bid.

14. In light of the number of LOIs received on or before the Phase 1 LOI Bid Deadline, I have determined, in consultation with the Monitor and PJT Partners LP, that there is a reasonable prospect of obtaining one or more Bids. As such, PJT Partners LP intends, on or before March

28, 2016, to notify certain of the Prospective Bidders that the SISP will progress to Phase 2. I anticipate that PJT Partners LP will post a form of asset purchase agreement on the Due Diligence Access site by March 28, 2016 in accordance with the SISP.

II. PARALLEL LIQUIDATION PROCESS

15. In conjunction with the SISP, the Walter Canada Group has launched a separate request for liquidation proposal process for its assets (the "**Liquidation Alternative**"). On February 1, 2016, the Monitor, on behalf of the Walter Canada Group, sent a letter requesting liquidation proposals to a number of liquidators, many of whom have expressed interest in acting as the liquidator in the event that a Bid under the SISP cannot be executed. The Liquidation Alternative is intended to assist with the assessment of the value of any LOIs or Bids received and to address circumstances where no executable Bid is obtained under the SISP for one or more of the mines at comparable or greater value.

16. The deadline for submitting liquidation proposals was also on March 18, 2016. A number of prospective liquidators conducted site visits to examine the assets prior to the liquidation proposal deadline.

17. On the liquidation proposal deadline, the Monitor, on behalf of the Walter Canada Group, received a number of liquidation proposals. I am reviewing the liquidation proposals with the Monitor. The Monitor will be requesting that liquidators clarify aspects of their bids, including whether their proposals remain open for acceptance until June 30, 2016, the outside date for the closing of a going concern transaction pursuant to the SISP.

III. DE-INTEGRATION OF MANAGEMENT AND OPERATIONS FROM WALTER U.S. GROUP

18. As discussed in the First Harvey Affidavit, the Shared Services provided by the Walter U.S. Group to the Walter Canada Group are crucial to the Walter Canada Group's continued operations. However, the Shared Services will no longer be available to the Walter Canada Group following the sale of the assets of Walter Energy U.S. in the Chapter 11 Cases. The anticipated sale closing date has been delayed until March 31, 2016.

19. I have been working with the Monitor and Walter Canada Group management to establish internal mechanisms to eliminate the need for the provision of any Shared Services by the Walter U.S. Group, including the transfer of certain Shared Services to third party service providers, so that the Walter Canada Group will be fully independent from Walter Energy U.S. Our efforts to date include (among other things):

(a) Establishing independent information technology services, including obtaining relevant software licenses and backing up data;

(b) Sourcing new information technology support service providers;

(c) Establishing a new domain name for Walter Canada Group email addresses;

(d) Seeking to obtain electronic and physical copies of all relevant books and records;

(e) Setting up independent banking functions;

(f) Retaining an individual to perform accounts payable and bookkeeping functions;

(g) Entering into an agreement with an independent payroll processor;

(h) Seeking to obtain independent property and director and officer insurance policies; and

(i) Sourcing consultants for environmental and geotechnical matters.

20. Efforts are underway to fully eliminate the need for any Shared Services. I anticipate that the transfer of Shared Services will be complete before the sale of the U.S. assets closes.

IV. RESIGNATION OF CERTAIN OFFICERS

21. On January 20, 2016, the following officers, who are employees of Walter Energy U.S. resigned:

(a) William G. Harvey, the affiant for the first three affidavits sworn in the CCAA proceedings, resigned from his position as Chief Financial Officer and Executive Vice President of Walter Energy Canada.

(b) Michael Hurley resigned from his position as Vice President, Tax for the Canadian Petitioners.

(c) Michael Griffin resigned from his positions as Secretary or Treasurer for the Canadian Petitioners.

(d) Craig Brasfield resigned from his position as Senior Director, Asset Management of four of Walter Energy Canada's subsidiaries.

22. These resignations were anticipated as part of the separation of the Walter Canada Group from the Walter U.S. Group.

V. INTERCOMPANY CHARGE

23. As discussed in paragraph 18 of the Second Affidavit of William G. Harvey, sworn December 31, 2015 (the "**Second Harvey Affidavit**"), the Walter Canada Group sought a charge in favour of "any member of the Walter Canada Group to the extent that a member of the Walter Canada Group (the "Protected WC Entity") makes any payment or incurs or discharges any obligation (including any letter of credit obligations) on behalf of any other member of the Walter Canada Group [...] (the "Beneficiary WC Entity")." [emphasis added]

24. In paragraph 20 of its January 5th Order, this Honourable Court granted a charge (the "**Intercompany Charge**") to each Protected WC Entity over all of the assets of each Beneficiary WC Entity. However, the language of paragraph 20 limits the definition of Protected WC Entities to any member of the Walter Canada Group that "makes any payment or incurs or discharges any obligation with respect to any letter of credit obligation" [emphasis added].

25. From time to time, Brule Coal Partnership provides financial support to Walter Canadian Coal Partnership, Wolverine Coal Partnership and Willow Creek Coal Partnership, as these partnerships do not have sufficient cash to meet their operating needs. The financial support offered may not be connected to any letter of credit obligations, but should nevertheless be secured by the Intercompany Charge. As such, the Walter Canada Group seeks to amend the January 5th Order to remove the phrase "with respect to any letter of credit obligation" from paragraph 20.

VI. SELENIUM BIOCHEMICAL REACTOR

26. As explained in the First Harvey Affidavit, the Walter Canada Group has experienced some difficulties meeting the revised provincial water quality guidelines relating to selenium levels at the Brule Mine. The Walter Canada Group has constructed a biochemical reactor (or bioreactor) at the Brule Mine to treat selenium as contemplated by the relevant permits and the selenium management plan associated with the Brule Mine. At this time, the bioreactor is not functioning as intended due to consistently low water levels in the bioreactor. Certain repairs are needed to address this issue. The Walter Canada Group has discussed the issues associated with the bioreactor with representatives of the Ministry of Environment. The Walter Canada Group will provide the Ministry of Environment and the Ministry of Energy and Mines with further updates by including the water treatment issues and the repair plan in the annual reports required by both ministries.

27. The Walter Canada Group is currently in the process of developing a plan to repair the bioreactor and will report to the Ministry of Environment and the Court in due course with respect to these

repairs. The Walter Canada Group will not be able to commence repairing the bioreactor until late May at the earliest due to the amount of snow on the ground at the site.

VII. BULLDOZER TRANSACTION

28. As Pursuant to the Initial Order, this Court authorized the sale by Willow Creek Coal Partnership and Brule Coal Partnership of certain surplus equipment, being three bulldozers (the "**Purchased Equipment**"), to JWR, a related party of the Walter Canada Group. After the issuance of the Initial Order, and as more fully described in the Second Affidavit, only one of the three bulldozers met certain U.S. regulatory requirements for import into the United States, so the Bill of Sale was revised to reflect a sale of only one bulldozer and the purchase price for the bulldozer is USD$465,000.

29. JWR has now paid the full purchase price for the Purchased Equipment and the Purchased Equipment has been shipped to JWR. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a true copy of the Monitor's First Certificate and the Monitor's Second Certificate in respect of the Purchased Equipment.

VIII. STAY EXTENSION

30. The Walter Canada Group was granted protection from their creditors under the CCAA pursuant to the Initial Order. The Initial Order granted, *inter alia*, a stay of proceedings 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.

31. The Walter Canada Group has been proceeding in good faith and with due diligence to effect a restructuring under the CCAA, including by completing a sale pursuant to the SISP. In addition to the activities outlined above, since my appointment as CRO I have, among other things:

(a) Met with government representatives to discuss the status of the CCAA proceedings and the SISP;

(b) Met with United Steel Workers ("**USW**") representatives to discuss potential severance claims that may allegedly arise if the unionized employees at the Wolverine Mine are not recalled to work prior to April 2016 as well as certain other issues, including the outstanding matters for which judicial review has been sought;

(c) Issued notices to the USW and to the Ministry of Jobs, Tourism & Skills Training & Responsible for Labour to advise that the unionized employees at the Wolverine Mine would not be recalled prior to the expiration of recall rights in April 2016;

(d) Communicated with counsel to the United Mine Workers of America 1974 Pension Plan and Trust (the "**1974 Plan**") and scheduled a meeting for March 29, 2016 to discuss the 1974 Plan's claims in the Chapter 11 proceedings for not less than USD$904 million in respect of unpaid pre-petition monthly pension contributions and the withdrawal liability of participating employers in the 1974 Plan;

(e) Met with representatives of certain First Nations groups to discuss the status of the CCAA proceedings and certain related matters;

(f) Met with other creditors and interested parties to discuss the status of the CCAA proceedings and certain outstanding claims;

(g) Set up reporting structures and controls;

(h) Engaged tax advisors;

(i) Travelled to Wales to commence a financial review of the Walter U.K. Group (as defined in the January 5th Order) in furtherance of the SISP and to explore options for the Walter U.K. Group, including a potential restructuring, sale or wind down and liquidation of the Walter U.K. Group; and

(j) Travelled to Northeastern British Columbia to tour the mines and meet with management and stakeholders.

32. The extension of the Stay Period to June 30, 2016 is requested to allow the Walter Energy Group to continue to work in consultation with its advisors and the Monitor toward the sale of the business with the objective of obtaining the best possible result for the benefit of all stakeholders.

33. As the Phase 2 LOI Deadline (as defined in the SISP) is 60 days following the Phase 2 Commencement Date (which is on or before March 28, 2016), an extension of the stay to June 30, 2016 would provide sufficient time for the Financial Advisor to solicit, and the Prospective Bidders to submit, binding Bids and, if one or more Qualified Bids are received, continue to Phase 3 of the SISP.

34. From my review of the current cash flow projections, I do verily believe that the Walter Canada Group will have sufficient operating cash to continue operations during the proposed extended Stay Period. An extension of the Stay Period through to June 30, 2016 will provide the Walter Canada Group, PJT Partners LP and the Monitor with the best opportunity in the circumstances to seek a going concern outcome for the Walter Canada Group and to avoid a need to wind-down

the Walter Canada Group's operations and commence reclamation of the Walter Canada Group's mines.

35. It is my understanding that the Monitor supports the extension of the Stay Period and will file a report attaching cash flow forecasts that demonstrate, subject to the assumptions more fully set out in the report, that the Walter Canada Group has sufficient liquidity to continue its operations as currently conducted through to the end of the proposed extended stay period, including the ongoing care and maintenance of the mines.

36. The Walter Canada Group has been acting in good faith and with due diligence in these proceedings.

37. It is in the best interests of the Walter Canada Group and all their stakeholders that the Stay Period be extended to June 30, 2016 to enable the Walter Canada Group to carry out the SISP. Further, I do verily believe that the amendment to the Intercompany Charge proposed herein is appropriate in the circumstances.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on March 22, 2016.

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

Patrick Riester

WILLIAM E. AZIZ

SCHEDULE "A"

Petitioners

1. Walter Canadian Coal ULC
2. Wolverine Coal ULC
3. Brule Coal ULC
4. Cambrian Energybuild Holdings ULC
5. Willow Creek Coal ULC
6. Pine Valley Coal, Ltd.
7. 0541237 B.C. Ltd.

TAB 10A

This is Exhibit "**A**" referred to in Affidavit #1 of **William E. Aziz** sworn March 22, 2016 at Toronto, Ontario.

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

Patricia Brestero

NO. S1510120
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 WALTER ENERGY CANADA HOLDINGS, INC., AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

REQUISITION – GENERAL

Filed by: The Monitor, KMPG Inc.

REQUIRED:

To file the attached Monitor's First Certificate dated December 31, 2015.

Date: February 29, 2016

Signature of counsel for the Monitor,
KPMG Inc.
Peter J. Reardon

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,

R.S.C. 1985, c. C-36

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,

S.B.C. 2002, c. 57

-AND-

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF WALTER ENERGY CANADA HOLDINGS, INC. AND THOSE PARTIES LISTED ON SCHEDULE "A" TO THE INITIAL ORDER

PETITIONERS

MONITOR'S FIRST CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Madame Justice Fitzpatrick of the British Columbia Supreme Court (the "**Court**") dated December 7, 2015 (the "**Initial Order**"), KPMG Inc. was appointed as the monitor (the "**Monitor**") in connection with the CCAA proceedings of the Petitioners.

B. Pursuant to the Initial Order, the Court approved the Bill of Sale and the Surplus Equipment Transaction contemplated therein and provided for the vesting in the Purchaser of the Purchased Equipment.

C. The Monitor stated an intention in its Pre-Filing Report dated December 6, 2015 that it would expand upon the marketing process for the Purchased Equipment.

D. After the issuance of the Initial Order, the Bill of Sale was revised to reflect a sale of only one bulldozer due to certain restrictions on importing the other bulldozers into the United States that were to be Purchased Equipment under the Bill of Sale.

E. All capitalized terms used but not defined herein shall have the meaning given in the Initial Order.

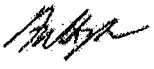
THE MONITOR CERTIFIES the following:

1. The Monitor has caused the marketing process for the Purchased Asset as defined in the Bill of Sale attached hereto as Schedule "A" to be expanded upon and confirms that no superior offer for the Purchased Asset has been received.

2. The conditions precedent to the application of paragraphs 26 and 27 of the Initial Order have been satisfied to the satisfaction of the Monitor in respect of the Purchased Asset.

This Certificate was delivered by the Monitor at Vancouver, BC on December 31, 2015.

KPMG Inc., in its capacity as Monitor of Walter Energy Canada Holdings, Inc., and not in its personal capacity

Per: 

Name: Anthony Tillman

Title: Senior Vice President

SCHEDULE "A"

BILL OF SALE

THIS BILL OF SALE is made the _____ day of December, 2015.

BETWEEN:

BRULE COAL PARTNERSHIP
(collectively, the "**Vendor**")

– and –

JIM WALTER RESOURCES, INC.
(the "**Purchaser**", and together with the Vendor, the "**Parties**")

WHEREAS:

A. Certain Canadian affiliates of the Vendor (collectively, "**Walter Energy Canada**") were granted creditor protection under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") pursuant to an Initial Order of the Supreme Court of British Columbia (the "**Court**") dated December 7, 2015 (the "**Initial Order**") and KPMG Inc. was appointed as the Monitor in the CCAA proceedings.

B. Walter Energy Canada obtained the Court's authorization to have the CCAA stay of proceedings extended to the Vendor as part of the CCAA proceedings.

C. The Vendor desires to sell, and the Purchaser desires to purchase, one (1) bulldozer as identified on Schedule "A" hereto, (the "**Purchased Asset**") on the terms and conditions set out herein and in accordance with the terms of the Initial Order.

D. The Court authorized the entering into of a Bill of Sale in accordance with the terms of the Initial Order, *inter alia*, (i) vesting the Purchased Asset in the Purchaser free and clear of any encumbrances except for the Equipment Charge (as defined below) upon the issuance of the Monitor's First Certificate (as defined below) in accordance with the terms of the Initial Order; (ii) granting the Vendor a Court-ordered first-ranking charge on the Purchased Asset in an amount equal to the Purchase Price (as adjusted) until payment by the Purchaser of same; and (iii) reverting ownership of the Purchased Asset back to the Vendor in the event that the Purchase Price is not received by the Vendor within 90 days of the date of this Bill of Sale.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Purchase and Sale. Upon the execution of this Bill of Sale, the Vendor hereby agrees to sell, convey, assign, transfer and set over unto the Purchaser all of the Vendor's right, title and interest in and to the Purchased Asset on an "as is, where is" basis for the amount of USD $465,000 (the "**Purchase Price**"), to have and to hold such Purchased Asset, unto and to the use of the Purchaser and its successors (including any successor by reason of amalgamation) and permitted assigns, to and for its sole and only use forever (the "**Transfer**"), provided that the sale and enforcement of the Transfer is subject to and conditional upon the delivery of a first Monitor's certificate to the Purchaser in

accordance with the terms of the Initial Order (the "**First Monitor's Certificate**"). Following the execution of this Bill of Sale, the Parties may, by mutual written agreement, elect to increase the quantum of the Purchase Price to meet or exceed any other offer received by the Vendor and the Monitor as a result of any further marketing of the Purchased Asset required by the Court. The Purchase Price constitutes payment in full for the Purchased Asset. The Parties agree that the Purchase Price is exclusive of all applicable taxes (including, but not limited to, sales and transfer taxes).

2. Method of Payment. A portion of the Purchase Price equal to USD $250,000 (the "**First Installment**") shall be paid by the Purchaser to the Monitor on behalf of the Vendor one business day following the date upon which the First Monitor's Certificate is delivered to the Purchaser (the "**Certificate Date**"). The Purchase Price, less the amount of the First Installment, (the "**Second Installment**") shall be paid by the Purchaser to the Monitor on behalf of the Vendor on or before the day that is 60 days following the Certificate Date. In the event that the full Purchase Price has not been paid by the Purchaser by the 60th day following the Certificate Date, the Purchaser agrees that it shall pay interest on all overdue amounts at a rate of 18% per annum. In the event that the Second Installment is not paid to the Vendor by the 90th day following the date of this Bill of Sale, the First Installment shall be retained by the Vendor as liquidated damages and not as a penalty. Notwithstanding the foregoing, the Purchaser shall continue to be obligated to pay the entire Purchase Price to the Vendor, plus accrued interest thereon, and any and all costs (including all legal and court costs) associated with obtaining any necessary approvals at that time, until the day that is 5 days after the Vendor notifies the Purchaser that an alternative buyer for the Purchased Asset has been found. Both the First Installment and the Second Installment shall be payable by way of wire transfer of immediately available funds from the Purchaser to the Monitor, on behalf of the Vendor, in accordance with the wire transfer instructions set out on Schedule "B" hereto.

3. Taxes. The Purchaser shall be responsible for and shall pay all applicable taxes (including, but not limited to, all sales and transfer taxes, registration charges and transfer fees, including the goods and services/harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada) and any similar value added or multi-staged tax imposed under applicable provincial legislation) in respect of the purchase and sale of the Purchased Asset under this Bill of Sale.

4. Transfer of the Purchased Asset. The Vendor shall arrange for the delivery of the Purchased Asset to the Purchaser and the Purchaser shall pay any and all of the fees, costs and expenses associated with the delivery of the Purchased Asset to the Purchaser, including, for greater certainty, any fees, costs and expenses relating to the removal, transportation and shipment thereof (including, but not limited to, the transportation costs set out on Schedule "A" hereto which are included in the Purchase Price) and any and all costs associated with obtaining any Environmental Protection Agency compliance certificates or approvals ("**EPA Certificates**") necessary for delivery of the Purchased Asset to the Purchaser. The failure by the Purchaser to obtain the EPA Certificates shall not modify or amend the Purchaser's rights and obligations hereunder (including the Purchaser's obligation to remit the entire Purchase Price to the Vendor) provided however that the Purchaser may direct the Vendor to deliver the Purchased Asset to another location that the Purchaser may specify provided that the Purchased Asset can

lawfully be delivered to such place. Notwithstanding that the Transfer of the Purchased Asset to the Purchaser shall occur upon the delivery of the First Monitor's Certificate to the Purchaser, the Purchaser shall not be entitled to take possession of the Purchased Asset until the Purchaser has transferred and the Vendor has received the Purchase Price from the Purchaser. In accordance with the terms of the Initial Order, ownership of the Purchased Asset shall revert back to the Vendor in the event that the entire Purchase Price is not received by the Vendor within 90 days following the date of the Bill of Sale.

5. Security Interest. To secure the Purchaser's payment of the Purchase Price to the Vendor, the Purchaser hereby grants the Vendor a first-lien security interest in the Purchased Asset including all accretions, substitutions, replacements, additions and accessions to any of them and all proceeds of any of the foregoing, upon the execution of this Bill of Sale and the delivery of the Monitor's First Certificate (the **"Security Interest"**). The Purchaser acknowledges that value has been given and that the Security Interest granted herein shall attach to the Purchased Asset upon the execution by the Parties of this Bill of Sale and the delivery of the Monitor's First Certificate. The Purchaser further acknowledges that Walter Energy Canada has obtained an Initial Order which, *inter alia*, grants the Vendor a Court-ordered first-ranking charge on the Purchased Asset in an amount equal to the Purchase Price until payment by the Purchaser of same (the **"Equipment Charge"**). Following receipt of the entire Purchase Price by the Vendor, the Equipment Charge will be extinguished automatically upon delivery of a second Monitor's certificate to the Purchaser certifying that payment has been made (the **"Second Monitor's Certificate"**).

6. "As Is, Where Is". The Purchaser acknowledges that the Purchased Asset is being purchased on an "as is, where is" basis and that no representations, warranties or conditions, statements, understandings or agreements, expressed or implied, in law or in equity, by statute or otherwise, have been made by the Vendor or exist with respect to or in connection with the Purchased Asset, their description, fitness for any purpose, merchantability, quality, state, condition, location, value, the validity or enforceability of rights, any requirement for licenses, permits, approvals, consents for ownership, occupation or use, compliance with any government laws, regulations, by-laws and orders or in respect of any other matter or thing whatsoever and any and all conditions and warranties expressed or implied by the *Sale of Goods Act* (British Columbia) and any other applicable legislation do not apply to the sale of the Purchased Asset and are hereby waived by the Purchaser. The Purchaser acknowledges that it has conducted, and shall be deemed to have entirely relied on, its own inspection and investigation in proceeding with the purchase of the Purchased Asset and accepts the same in their present state, condition and location.

7. Risk of Loss and Insurance. From and after the delivery of the First Monitor's Certificate to the Purchaser, the Purchased Asset shall be at the risk of the Purchaser regardless of where the Purchased Asset are situate and the Purchaser shall be responsible for obtaining any and all insurance with respect to the Purchased Asset. The Purchaser hereby indemnifies and holds the Vendor and their agents and representatives harmless from any claims, losses, expenses, penalties damages and liabilities of any kind or nature which the Vendor may be required to pay for personal injury (including death) or any property damage suffered by any person which the Vendor or their agents and

representatives may at any time sustain for reasons that include but are not limited to the operation, handling or transportation of the equipment after the issuance of the Monitor's First Certificate, which indemnity shall survive the execution of this Bill of Sale.

8. Performance. Following the delivery of the First Monitor's Certificate to the Purchaser, the Purchaser shall perform all of its obligations hereunder, including its obligation to remit the First Installment and the Second Installment to the Vendor. Following the delivery of the Second Monitor's Certificate to the Purchaser, the Vendor shall perform all of its obligations hereunder, including its obligation to deliver the Purchased Asset to the Purchaser, provided that the Purchaser shall pay all costs associated with such delivery and shall obtain any required EPA Certificates and provided further that the Vendor shall not incur any liability for failure to perform as a result of force majeure.

9. General.

(a) The provisions hereof will enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

(b) This Bill of Sale is made under and shall be governed by and construed in accordance with the law of the Province of British Columbia and the federal laws of Canada applicable in the Province of British Columbia.

(c) This Bill of Sale may be executed by the Parties in counterparts and may be executed and delivered by facsimile or e-mail (PDF) and all the counterparts, facsimiles and PDFs shall together constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Bill of Sale as of the date first written above.

JIM WALTER RESOURCES, INC.

By: _____

Name: Michael Griffin

Title: Vice President & Treasurer

IN WITNESS WHEREOF, the Parties hereto have duly executed this Bill of Sale as of the date first written above.

BRULE COAL PARTNERSHIP by its general partner, WALTER CANADIAN COAL PARTNERSHIP, by its general partner, WALTER ENERGY CANADA HOLDINGS, INC.

By: _____

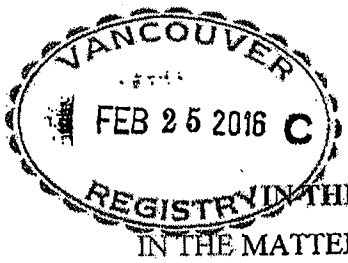
Name: ALLAN KANTAS

Title: V.P.

Schedule "B"

Wire Transfer Instructions

(See attached)



NO. S1510120
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 WALTER ENERGY CANADA HOLDINGS, INC., AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

REQUISITION – GENERAL

Filed by: The Monitor, KMPG Inc.

REQUIRED:

To file the attached Monitor's Second Certificate dated February 24, 2016.

Date: February 25, 2016

Signature of counsel for the Monitor,
KPMG Inc.
Peter J. Reardon

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF WALTER ENERGY CANADA HOLDINGS, INC. AND THOSE PARTIES LISTED ON SCHEDULE "A" TO THE INITIAL ORDER

PETITIONERS

MONITOR'S SECOND CERTIFICATE – BULLDOZEER SALE

RECITALS

A. Pursuant to an Order of the Honourable Madam Justice Fitzpatrick of the British Columbia Supreme Court (the "**Court**") dated December 7, 2015 (the "**Initial Order**"), KPMG Inc. was appointed as the monitor (the "**Monitor**") in connection with the CCAA proceedings of the Petitioners.

B. Pursuant to the Initial Order, the Court approved the Bill of Sale and the Surplus Equipment Transaction contemplated therein and provided for the vesting in the Purchaser of the Purchased Asset.

C. After the issuance of the Initial Order, the Bill of Sale was revised to reflect a sale of only one bulldozer due to certain restrictions on importing the other bulldozers into the United States that were to be Purchased Assets under the Bill of Sale. The amended Bill of Sale was attached as Schedule "A" the Monitor's First Certificate dated December 31, 2015 (the "**Monitor's 1st Certificate**").

D. All capitalized terms used but not defined herein shall have the meaning given in the Monitor's 1st Certificate.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Monitor confirms that the Monitor has received on behalf of the Vendor the Purchase Price for the Purchased Asset.

This Certificate was delivered by the Monitor at Vancouver, BC on February 24, 2016.

KPMG Inc., in its capacity as Monitor of Walter Energy Canada Holdings, Inc., and not in its personal capacity

Per: _____

Name: Anthony Tillman

Title: Senior Vice President

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 A PLAN OF COMPROMISE AND ARRANGEMENT OF WALTER ENERGY CANADA HOLDINGS, INC. AND THE OTHER PETITIONERS LISTED ON SCHEDULE "A"

PETITIONERS

AFFIDAVIT #1 OF WILLIAM E. AZIZ

DLA Piper (Canada) LLP
Barristers & Solicitors
2800 Park Place
666 Burrard Street
Vancouver, BC V6C 2Z7

Tel. No. 604.687.9444
Fax No. 604.687.1612

Client Matter No. 15375-00001 TAG/mlf