

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 4)

DLA PIPER (CANADA) LLP
2800 Park Place
666 Burrard Street
Vancouver, BC V6C 2Z7

Attention: Mary I.A. Buttery and
H. Lance Williams

Tel: 604.687.9444
Fax: 604.687.1612

Mary I.A. Buttery &
H. Lance Williams
(DLA Piper (Canada) LLP)
- and -

Marc Wasserman,
Patrick Riesterer & Mary Paterson
(Osler, Hoskin & Harcourt LLP)

Counsel for the Petitioners

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OF WALTER ENERGY CANADA HOLDINGS, INC., AND THE OTHER PETITIONERS
LISTED IN SCHEDULE "A" TO THE INITIAL ORDER

PETITIONERS

WALTER CANADA GROUP'S BOOK OF EVIDENCE

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SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

MAR 10 2011



NO. S110653
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF AN ARRANGEMENT OF WESTERN COAL CORP. PURSUANT TO
SECTION 288 OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, CHAPTER 57, AS AMENDED

AND

IN THE MATTER OF AN ARRANGEMENT OF WESTERN COAL CORP. AND WALTER
ENERGY, INC.

WESTERN COAL CORP.

PETITIONER

FINAL ORDER

BEFORE THE HONOURABLE JUSTICE
JMR
McEWAN

THURSDAY, THE 10th DAY
OF MARCH, 2011.

UPON THE APPLICATION of the Petitioner, Western Coal Corp. ("Western"),
AND ON HEARING Craig A.B. Ferris, counsel for the Petitioner, AND UPON READING the
Petition herein, the Affidavit #1 of Keith Calder, sworn on February 1, 2011 and the Affidavit #2
of Keith Calder, sworn March 8, 2011 on behalf of the Petitioner and filed; AND UPON IT
APPEARING that notice of the time and place of Hearing of this application was given to the
Western Shareholders; AND UPON CONSIDERING the substantive and procedural fairness to
the parties affected thereby of the terms and conditions of the Plan of Arrangement, a copy of
which is attached hereto and of the transactions contemplated by the Plan of Arrangement;

AND UPON BEING ADVISED that it is the intention of the parties to rely on
Section 3(a)(10) of the United States *Securities Act of 1933*, as amended, and that the declaration

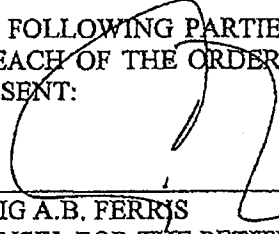
of the fairness of, and the approval of the Arrangement contemplated in the Plan of Arrangement, by this Honourable Court will serve as a basis for an exemption from the registration requirement from the United States *Securities Act of 1933*, as amended, pursuant to Section 3(a)(10) thereof, for the distributions of securities contemplated in connection with the Arrangement:

1. THIS COURT ORDERS AND DECLARES THAT pursuant to the provisions of Section 291(4)(c) of the *Business Corporations Act*, S.B.C. 2002, c.57, as amended, the Arrangement in the form annexed to this Order, including the terms and conditions thereof, and the distributions of securities contemplated therein, is substantively and procedurally fair and reasonable to the Western Shareholders.

2. THIS COURT FURTHER ORDERS THAT the Arrangement as provided for in the Plan of Arrangement be and is hereby approved pursuant to the provisions of Section 291(4)(a) of the *Business Corporations Act*, S.B.C. 2002, c. 57, as amended.

3. THIS COURT FURTHER ORDERS THAT the Petitioner shall be entitled, at any time, to seek leave to vary this Order, to seek the advice and direction of this Court as to the implementation of this Order or to apply for such further Order or Orders as may be appropriate.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

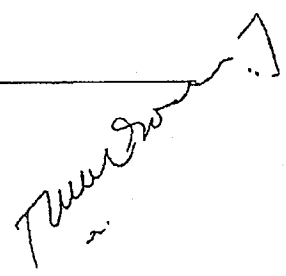


CRAIG A.B. FERRIS
COUNSEL FOR THE PETITIONER

BY THE COURT



REGISTRAR



TAB 16



This is the 1st Affidavit of Keith Calder
in this case and was made on February 1, 2011

NO. S-110653
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF AN ARRANGEMENT OF WESTERN COAL CORP. PURSUANT TO
SECTION 288 OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, CHAPTER 57, AS AMENDED

AND

IN THE MATTER OF AN ARRANGEMENT OF WESTERN COAL CORP. AND WALTER
ENERGY, INC.

WESTERN COAL CORP.

PETITIONER

AFFIDAVIT

I, Keith Calder, businessperson, of Suite 1000, 885 Dunsmuir Street, in the City
of Vancouver, in the Province of British Columbia, AFFIRM THAT:

1. I am a member of the Board of Directors (the "Board") of the Petitioner, Western
Coal Corp. ("Western"), and as such have personal knowledge of the facts and matters
hereinafter deposed to, save and except where the same are stated to be made upon information
and belief, and, as to such facts, I verily believe the same to be true.
2. Capitalized terms not defined herein have the meanings set out in the
management information circular of Western (the "Circular"), a true copy of which is attached
hereto and marked as Exhibit "A".
3. I have read the Petition dated February 1, 2010 and confirm on behalf of Western
that, to the best of my knowledge, the statements made therein are true and correct.

4. This Affidavit is sworn in support of an application for an order approving a proposed plan of arrangement involving the Petitioner and its shareholders, and Walter Energy, Inc. ("Walter") and a corporation to be incorporated under the *Business Corporations Act* (British Columbia), S.B.C. 2002, Chapter 57, as amended (the "BCBCA") as a wholly owned subsidiary of Walter ("Canco") under section 288 of the BCBCA (the "Arrangement").

5. This Affidavit is also sworn in support of a motion for an interim order for advice and directions (the "Interim Order") in respect of the calling, holding and conduct of a special meeting (the "Meeting") of the holders of common shares in the capital of Western (the "Western Shareholders") to consider and, if thought fit, approve, with or without variation:

- (a) a special resolution of the Western Shareholders (the "Arrangement Resolution"), adopting and approving, with or without variation, the Arrangement substantially in the form set out at Appendix "E" to the Circular, which is attached as Exhibit "A" to hereto; and
- (b) such other business as may properly come before the Meeting or any adjournment thereof.

6. The Petitioner will seek the approval of the Arrangement from the Western Shareholders and will seek the approval of this Court and a declaration that the Arrangement is procedurally and substantively fair to the Western Shareholders.

7. If the Arrangement Resolution is passed and the Arrangement is approved and completed, Canco will acquire all of the outstanding Western Shares not already held by Walter, Western or their respective affiliates. Each Western Shareholder who is not a Restricted Shareholder will be entitled to receive, in exchange for each Western Share, \$11.50 in cash, or 0.114 of one common share in the capital of Walter ("Walter Share"), subject to pro-rata. If the Arrangement is completed, Western will become an indirect, wholly-owned subsidiary of Walter.

8. The remainder of this Affidavit is organized as follows:

- (a) *The Parties*. In this section, I set out information about Western, Walter and Canco.

- (b) *The Arrangement.* In this section, I describe the Arrangement and the effect on the Western Shareholders, the steps involved in completing it, and the conditions precedent to implementation.
- (c) *Background.* In this section, I summarize the background to the Arrangement, including the consideration of the Board concluding in the recommendation of the Board that Western Shareholders vote to approve the Arrangement.
- (d) *The Meeting.* In this section, I describe the mechanics for providing notice and for conducting the Meeting.
- (e) *Dissent Rights for Registered Western Shareholders.* In this section, I describe the dissent rights that are to be provided to registered Western Shareholders in connection with the Arrangement.
- (f) *Fairness of the Arrangement.* In this section, I describe the steps taken by the Board which led it to conclude that the Arrangement is fair to the Western Shareholders and in the best interests of Western.
- (g) *United States Securities Law Matters.* In this section, I describe some specific elements under United States securities legislation pertaining to the Arrangement and the intended use of the Order of this Court for the purposes of enabling the distribution of Walter Shares to Western Shareholders resident in or subject to United States securities legislation.
- (h) *Interim Order.* In this final section, I describe the terms of the interim order (the "Interim Order") sought by the Petitioner.

The Parties

Western

9. Western is a corporation existing under the British Columbia *Business Corporations Act*, S.B.C. 2002, c. 57, as amended (the "BCBCA"), with a head office located at Suite 1000, 885 Dunsmuir Street, Vancouver, British Columbia. Western's principal business is

the acquisition, exploration and development of coal properties with its primary focus being favourably located, high-quality coal deposits in three distinct operational groups: (i) the Canadian operations, located in north-eastern British Columbia, Canada, (ii) the U.S. operations, located in West Virginia, U.S. and (iii) the UK operations, located in South Wales, United Kingdom.

10. The authorized capital of Western consists of an unlimited number of common shares (the "Western Shares"). As at January 31, 2011, there were 352,141,540 outstanding, fully paid and non-assessable Western Shares without par value, of which 280,018,714 Western Shares are entitled to be voted at the Meeting. Pursuant to section 177 of the BCBCA, the 72,122,826 Western Shares held directly or indirectly by Cambrian Mining Limited ("Cambrian"), Western's wholly-owned subsidiary, are not entitled to be voted at a meeting of Western shareholders, including the Meeting. The Western Shares are listed for trading on the Toronto Stock Exchange ("TSX") and the London Stock Exchange Alternative Investment Market under the trading symbol "WTN".

11. There are issued and outstanding options to purchase Western Shares (the "Western Options") granted under the Western Stock Option Plans that, as of January 31, 2011, entitled holders ("Western Optionholders") to acquire up to 8,658,744 additional Western Shares. The Western Options are not traded on any securities market.

12. There are issued and outstanding 2,681,845 share purchase warrants exercisable for Western Shares (the "Western Warrants") issued under a warrant indenture, dated as of June 28, 2007, between Western and Computershare Trust Company of Canada, as trustee. The Western Warrants are listed for trading on the TSX under the symbol "WTN.WT".

13. There are issued and outstanding 57,468 cash-settled deferred share units (the "Western DSUs") issued under the Western DSU Plan.

14. The directors of Western directly own or control an aggregate of 163,823 Western Shares and 4,290,968 Western Options, representing approximately 1.52% of the Western Shares on a fully diluted basis. Each of the directors has entered into a voting agreement with Walter pursuant to which he has agreed, subject to the terms and conditions thereof, to vote his Western Shares in favour of the Arrangement Resolution.

Walter

15. Walter is a corporation existing under the laws of the State of Delaware with a head office located at 4211 West Boy Scout Blvd., Tampa, Florida 33607. Walter, together with its consolidated subsidiaries, is a leading producer and exporter of metallurgical coal for the global steel industry and also produces steam coal, coal bed methane gas, metallurgical coke and other related products. Walter's mining operations are primarily based in Alabama.

16. Walter beneficially owns or controls and directs 54,547,858 Western Shares, representing approximately 19.6% of the outstanding Western Shares. Walter intends to vote, or cause to be voted, these shares in favour of the Arrangement Resolution at the Meeting.

17. As set forth in the Circular, Walter has been authorized by its board of directors to enter into the Arrangement Agreement and, subject to this Court's approval, conduct the transactions necessary to complete the Arrangement, including but not limited to the exchange of Western Shares for Walter Shares or cash consideration.

Canco

18. Canco will be a corporation incorporated under the BCBCA and upon its formation will be wholly-owned subsidiary of Walter, created for the purpose of acquiring the remaining Western Shares pursuant to the Arrangement.

*The Arrangement*Overview

19. On December 2, 2010, Western and Walter entered into an arrangement agreement (the "Arrangement Agreement"), pursuant to which Walter agreed to acquire all of the outstanding Western Shares (other than those held by Walter, Western or their respective affiliates) by way of a statutory plan of arrangement pursuant to section 288 of the BCBCA (the "Plan of Arrangement").

20. If all necessary approvals are obtained and conditions satisfied or waived, the Arrangement will become effective at the Effective Time (which is expected to be at 12:01 a.m.

(Pacific time) on a date to be determined which is expected to be on or about April 1, 2011, but in any case, not later than June 30, 2011, or such later date as may be agreed to in writing by Western and Walter). At the Effective Time, the following shall be deemed to occur in the following order and, except as otherwise stated in the Plan of Arrangement, at five minute intervals:

- (a) Each Western DSU, whether vested or unvested, will be transferred by the holder thereof to Western and cancelled in exchange for a cash payment equal to \$11.50;
- (b) Western's notice of articles and articles shall be amended to give effect to the following changes:
 - (i) an unlimited number of a new class of shares designated as "Class A Shares" shall be created, having the rights, privileges, restrictions and conditions set out in Schedule 1 attached to the Plan of Arrangement; and
 - (ii) each outstanding Western Share, other than Western Shares held by any Affiliate of Western, will be exchanged for one Class A Share listed on the Toronto Stock Exchange;

No other consideration will be received by any holder of Western Shares in connection with the exchange of Western Shares for Class A Shares. The aggregate stated capital of Class A Shares will be equal to the amount set out in the Plan of Arrangement and the aggregate stated capital of Western Shares will be reduced by this amount;

- (c) simultaneously with the exchange of Western Shares for Class A Shares, each outstanding Western Option that has not been duly exercised prior to the Effective Time shall be exchanged with Western for a fully-vested and immediately exercisable option (a "Class A Replacement Option") to purchase from Western a number of Class A Shares equal to the number of Western Shares subject to such Western Option. Such Class A Replacement Option shall

provide for an exercise price per Class A Share equal to the exercise price per Western Share of such Western Option immediately prior to the Effective Time, subject to adjustment if necessary to ensure that the "in the money" value of the Class A Replacement Options immediately following the exchange does not exceed the "in the money" value of the Western Options immediately before the exchange. All other terms and conditions of a Class A Replacement Option will be the same as the Western Option for which it is exchanged;

- (d) Western Shares that were exchanged for Class A Shares shall be cancelled;
- (e) each outstanding Class A Share, other than Class A Shares held by Walter or any Affiliate thereof, shall be transferred without any further act or formality by the holder thereof to Canco in exchange for, at the holder's election and subject to pro-rata as described below:
 - (i) \$11.50 in cash (the "Cash Option"); or
 - (ii) 0.114 of a Walter Share (the "Walter Share Option");
- (f) simultaneously with the exchange of Class A Shares for cash and/or Walter Shares, each outstanding Class A Replacement Option shall be exchanged with Walter for a fully-vested and immediately exercisable option (a "Replacement Option") to purchase from Walter or Western, as Walter may determine, a number of Walter Common Shares equal to the product of the Exchange Ratio multiplied by the number of Class A Shares subject to such Class A Replacement Option. The Replacement Option shall provide for an exercise price per Walter Common Share equal to the exercise price per Class A Share of such Class A Replacement Option divided by the Exchange Ratio, subject to adjustment if necessary to ensure that the "in the money" value of the Replacement Option immediately following the exchange does not exceed the "in the money" value of the Class A Replacement Option immediately before the exchange. All other terms and conditions of a Replacement Option will be the same as the Class A Replacement Option for which it is exchanged; and

- (g) immediately following the exchanges of Class A Shares for cash and/or Walter Shares and of Class A Replacement Options for Replacement Options, the DSU Plan shall be terminated.

21. The Plan of Arrangement provides that, at any time prior to the second Business Day before the Effective Date, each of Walter and Western shall have the right to amend the steps that will be deemed to occur at the Effective Time by replacing these steps with the alternative steps set forth in Schedule 2 to the Plan of Arrangement. Such amendment shall not require any additional approval of the Court or the Western Shareholders.

Elections and Pro-Ration

22. A Western Shareholder who is not a Restricted Shareholder (discussed below) may elect, for every Western Share held, either the (i) Cash Option or (ii) Share Option, provided that:

- (a) the maximum aggregate number of Western Shares entitled to receive the Share Consideration shall be the product determined by multiplying (A) the number of Western Shares outstanding immediately prior to the Effective Time (other than those held by Walter, Western or their respective affiliates) by (B) 0.30 (the "Available Share Amount"); and
- (b) the maximum aggregate Cash Consideration payable by Walter shall be the product determined by multiplying (A) the number of Western Shares outstanding immediately prior to the Effective Time (other than those held by Walter, Western or their respective affiliates) by \$8.05 less (B) the product obtained by multiplying the number of Western Shares held by Dissenting Western Shareholders by \$11.50 (the "Available Cash Amount").

23. If the aggregate amount of the Share Consideration or the Cash Consideration that Western Shareholders elect to receive exceeds the Available Share Amount or the Available Cash Amount, as applicable, the elections made by all Western Shareholders will be adjusted on a pro-rata basis to the extent necessary to ensure that the aggregate elected amount of Share

Consideration or Cash Consideration equals the Available Share Amount or the Available Cash Amount, as applicable.

24. In order to ensure that the distribution of Walter Shares pursuant to the Arrangement complies with applicable laws in the United Kingdom ("UK"), other European Economic Area ("EEA") jurisdictions and Australia (collectively, the "Restricted Jurisdictions"), the election as to the form of consideration will not be made available to Western Shareholders who reside in a Restricted Jurisdiction and who are not "qualified investors" for the purposes of applicable securities laws in the UK or EEA or are not "sophisticated investors" or "professional investors" for the purposes of applicable Australian securities laws. These persons are defined in the Circular as "Restricted Shareholders".

Treatment of Western Warrants

25. The Arrangement will constitute a "Capital Reorganization" under the terms of the Western Warrant Indenture. Accordingly, if the Arrangement is completed pursuant to its terms, upon the Effective Time, holders of Western Warrants shall be entitled to receive, upon the exercise of their Western Warrants at any time after the Effective Date, in lieu of the number of Western Shares to which they were otherwise entitled to receive upon exercise of the Western Warrants, the consideration that they would have received pursuant to the Arrangement had they owned such Western Shares immediately prior to the Effective Time (and assuming that they did not make an election with respect to the form of consideration).

Conditions

26. The obligations of the Parties to complete the Arrangement are subject to the satisfaction or waiver of a number of mutual conditions precedent including, the approval by the Western Shareholders of the Arrangement in accordance with the Interim Order and the receipt of the Final Order in connection with the Arrangement. There are also additional conditions in favour of Western and Walter, respectively, which must be satisfied or waived in order for the Arrangement to be completed. For further detail on these conditions, see "The Arrangement Agreement – Conditions Precedent to the Arrangement" section of the Circular, which is attached hereto as Exhibit "A".

Dissent Rights for Western Shareholders

27. It is proposed that, subject to the direction of this Court, registered Western Shareholders, other than an affiliate of Western, be entitled to exercise rights of dissent under Division 2 of Part 8 of the BCBCA, as modified by Article 3 of the Plan of Arrangement, the Interim Order and the Final Order (the "Dissent Rights") with respect to Western Shares in connection with the Arrangement, provided that, notwithstanding Section 242(2) of the BCBCA, the written objection to the Arrangement Resolution must be sent to Western by Western Shareholders who wish to dissent not later than 5:00 p.m. (Pacific time) on the Business Day preceding the Meeting or any postponements or adjournments thereof.

28. Dissenting Western Shareholders who validly dissent in strict compliance with the procedures for exercising Dissent Rights and who are:

- (a) ultimately entitled to be paid fair value for their Western Shares, shall be paid an amount equal to such fair value by Western, and shall be deemed to have transferred such Western Shares as of the Effective Time to Canco, without any further act or formality, and free and clear of all liens, claims and encumbrances; or
- (b) ultimately not entitled, for any reason, to be paid fair value for their Western Shares, shall be deemed to have participated in the Arrangement, as of the Effective Time, on the same basis as a non-dissenting Western Shareholder and shall be entitled to receive the Consideration in exchange for their Western Shares on the basis determined in accordance with Sections 2.2(b), 12.2(e) and 2.4(b) of the Plan of Arrangement (subject to Section 2.3 of the Plan of Arrangement).

29. In no case shall Walter, Canco, the Depositary or any other Person be required to recognize Dissenting Western Shareholders as Western Shareholders after the Effective Time, and the names of such Dissenting Western Shareholders shall be deleted from the central securities register of Western as Western Shareholders at the Effective Time.

30. In no circumstances shall Walter, Canco, Western or any other person be required to recognize a person as a Dissenting Western Shareholder: (i) unless such person is the holder of the Western Shares in respect of which Dissent Rights are purported to be exercised immediately prior to the Effective Time; (ii) if such person has voted or instructed a proxy holder to vote such Notice Shares in favour of the Arrangement Resolution; or (iii) unless such person has strictly complied with the procedures for exercising Dissent Rights described in Section 3.1 of the Plan of Arrangement and does not withdraw such notice of dissent prior to the Effective Time.

31. For greater certainty: (i) in no circumstances shall Walter, Canco, Western or any other person be required to recognize a Dissenting Western Shareholder as the holder of any Western Share in respect of which Dissent Rights have been validly exercised at and after the completion of the steps contemplated in Section 2.2 of the Plan of Arrangement; and (ii) in addition to any other restrictions under Sections 237 to 247 of the BCBCA, holders of Western Options and Western DSUs shall not be entitled to exercise Dissent Rights.

Background to the Arrangement

32. The terms of the Arrangement and the provisions of the Arrangement Agreement are the result of arm's length negotiations conducted between representatives of Western and Walter and their respective advisors. Below is a brief summary of the extensive negotiations which led to the Arrangement Agreement and the proposed Arrangement. Attached hereto as Exhibit "A" is a true copy of the most current form of the Circular which Western intends to deliver in accordance with the Interim Order to the Western Shareholders. For further detail on these negotiations, see the "Background to the Arrangement" section of the Circular, attached hereto as Exhibit "A".

33. In late August 2010, Audley Capital advised Western that it believed that Western was, at that time, significantly undervalued in the public markets. In early September 2010, a representative of Audley Capital reiterated this view to the Board and also asked that the Board immediately initiate a publicly disclosed process to sell Western. The Board met twice in September 2010 to consider this proposal and, after carefully considering Audley Capital's request and the alternatives available to Western, the Board ultimately decided that it was not in

the best interests of Western and its stakeholders to initiate a public sales process for Western at that time.

34. In anticipation of actions that Audley Capital may have pursued to advance its stated objective of arranging for a public sale of Western, the Board retained RBC Dominion Securities Inc. ("RBC") as financial advisor and began taking a number of steps to prepare for the potential of an unsolicited proposal to acquire Western. These efforts proceeded over the balance of September and the first half of October 2010.

35. In late October 2010, Walter approached Western about the possibility of a strategic combination of Walter and Western and representatives of Walter and Western engaged in a number of discussions regarding Walter's proposal.

36. On November 14, 2010, Walter delivered to Western a written non-binding proposal to combine Walter and Western in a transaction in which Walter would acquire all of the outstanding shares of Western at a price of between \$10.00 and \$11.00 per share, payable in a combination of cash and Walter Shares.

37. On November 15, 2010, the Western Board met to consider Walter's written proposal. At that meeting, the Western Board determined that it would be appropriate to continue discussions with Walter regarding the proposed transaction. The Western Board also formed a special committee for the purposes of overseeing the ongoing discussions with Walter and any potential transaction that might result (the "Special Committee"). During the evening of November 15, 2010, Audley Capital advised each of Western and Walter that a third party had offered to purchase Audley Capital's shares of Western for \$11.50 per share in cash.

38. On November 16, 2010 representatives of Western, Walter and Audley Capital met in London, England to further discuss Walter's non-binding proposal and to discuss Audley Capital's current intentions with respect to the sale of its shares of Western. During these meetings Walter offered to purchase substantially all of Audley Capital's shares in Western for \$11.50 per share, payable in a combination of cash and Walter Shares. Audley Capital accepted this offer, subject to the immediate preparation of a mutually acceptable share purchase agreement. After Audley accepted the offer, Walter advised Western that Walter was prepared to increase the price at which it would acquire all of the other outstanding shares of Western to

\$11.50, payable in cash and Walter Shares. Walter also indicated that if Western were interested in pursuing this revised proposal, Walter would require that Western agree to enter into exclusive negotiations with it for a period of 30 days.

39. On November 17, 2010, Walter sent a revised non-binding written proposal to Western reflecting a price of \$11.50 per share, payable in a combination of cash and Walter Shares to be determined subsequent to further discussion and agreement, together with a form of exclusivity agreement. The Special Committee met that day with its legal and financial advisors to consider the revised proposal and determined that it would be in Western's best interests to pursue Walter's revised proposal and authorized Western to enter into the exclusivity agreement with Walter.

40. On November 18, 2010, Walter and Western entered into and publicly disclosed a 14-day exclusivity agreement. Separately, Walter and Audley Capital entered into and publicly disclosed a share purchase agreement with respect to Audley Capital's Western Shares.

41. On November 19, 2010, Western and Walter signed a mutual confidentiality and standstill agreement.

42. From November 19, 2010 to December 1, 2010, Western and Walter, together with their respective legal, financial, accounting and technical advisors, conducted detailed due diligence investigations of each other. During this period, legal counsel to Western and Walter began drafting and negotiating the Arrangement Agreement. The Special Committee met three times during this period to receive updates from management and its legal and financial advisors on the status of negotiations and to provide instructions on a number of issues relating to the proposed transaction.

43. On November 25, 2010, the Special Committee retained National Bank Financial Inc. ("NBF") to provide the NBF Valuation and Fairness Opinion.

44. On December 2, 2010, Western and Walter finalized the Arrangement Agreement and the Special Committee and Board met to consider the Arrangement Agreement. The Special Committee then received presentations from NBF, RBC and Goodmans LLP. NBF and RBC each presented their respective financial analyses regarding the proposed transaction. NBF

orally presented the conclusions of its formal valuation of the Western Shares and provided its opinion that, as of December 2, 2010, the consideration under the transaction is fair, from a financial point of view, to Western Shareholders other than Walter, Audley Capital and their respective affiliates and associates. RBC confirmed that it was prepared to give a similar opinion to the Western Board.

45. After careful consideration, the Special Committee unanimously resolved that the Arrangement is in Western's best interests, to recommend to the Western Board that Western enter into the Arrangement Agreement and that the Western Board recommend that Western Shareholders other than Walter, Audley Capital and their respective affiliates and associates vote in favour of the Arrangement.

46. The Western Board then met to receive the report of the Special Committee and RBC's opinion that, as of December 2, 2010, the consideration under the Arrangement is fair, from a financial point of view, to Western Shareholders other than Walter, Audley Capital and their respective affiliates and associates. The Western Board accepted the recommendation of the Special Committee and unanimously resolved that the Arrangement is in Western's best interests, that Western enter into the Arrangement Agreement and that Western Shareholders other than Walter, Audley Capital and their respective affiliates and associates vote in favour of the Arrangement.

47. After the Western Board meeting, Western and Walter executed and publicly announced the Arrangement Agreement.

The Meeting

48. Western intends to convene the Meeting on March 8, 2011 at which Western Shareholders will consider and vote upon the Arrangement Resolution to approve the Arrangement. Western proposes that, for the Arrangement Resolution to be effective, it must be approved, with or without variation, by (i) the affirmative vote of at least two-thirds of the votes cast on the Arrangement Resolution by Western Shareholders voting as a single class, present in person or represented by proxy at the Meeting excluding the votes attached to Western Shares directly or indirectly held by Western and (ii) pursuant to Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions, the affirmative vote of the

shareholders necessary to obtain the Minority Approval. The full text of the Arrangement Resolution is attached as Appendix "D" to the Circular.

49. It is intended that the Circular, form of proxy, the voting instruction form (for non-registered Shareholders) and Notice of Hearing of Petition (collectively referred to as the "Meeting Materials") shall be distributed not later than twenty-one (21) days prior to the Meeting as follows:

- (a) in the case of the registered Western Shareholders, by pre-paid ordinary mail, by expedited parcel post, by courier, by delivery in person or by facsimile, addressed to each such holder at his, her or its address, as shown on the books and records of Western as of February 1, 2011 (at 5:00 p.m. (Pacific Time)), the record date for determining Western Shareholders entitled to receive notice of and vote at the Meeting;
- (b) in the case of non-registered Western Shareholders, by providing multiple copies of the Meeting Materials to intermediaries and registered nominees in a timely manner, in accordance with National Instrument 54-101 of the Canadian Securities Administrators; and
- (c) in the case of the directors and auditors of Western, by pre-paid ordinary mail, by expedited parcel post, by email or by facsimile, by courier, or by delivery in person, addressed to the individual directors and the auditors.

Attached hereto and marked as Exhibits "A", "B", "C" and "D" are draft copies of the Circular, form of proxy, the voting instruction form (for non-registered Shareholders) and Notice of Hearing of Petition.

50. Western intends to send registered Western Shareholders a form of proxy, a draft of which is attached as Exhibit "B". General proxy information and the procedure to be used to deposit and/or revoke proxies are set out in detail in the Circular.

51. The holders of Western Warrants and Western Options will not be entitled to vote at the Meeting. Under the terms of the Western Warrants and the Western Options, the holders thereof are not to be afforded the rights of shareholders and accordingly will not be provided

with a vote at a meeting of shareholders. In addition, (i) the holders of Western Options will be entitled to receive Replacement Options on completion of the Arrangement and (ii) the rights of the holders of the Western Warrants are not being arranged and the Western Warrants will continue to be listed on the TSX following the completion of the Arrangement and will be exercisable for the consideration that the holders of such warrants would have received pursuant to the Arrangement had the Western Warrants been exercised immediately prior to the Effective Time.

52. The Circular describes the background leading to the Arrangement, the terms of the Arrangement and the steps Western Shareholders may take to vote. The Circular will attach the Petition as Appendix "F" and will attach a copy of any Interim Order as Appendix "G".

53. The final management information circular will be filed with applicable securities regulatory authorities in Canada and will be available to the public on the System for Electronic Document Analysis and Retrieval website maintained by the Canadian Securities Administrators at www.sedar.com.

54. Western proposes that for the purpose of counting votes respecting the Arrangement Resolution, any spoiled votes, illegible votes, defective votes and abstentions shall be deemed to be votes not cast and that the Western Shares represented by such spoiled votes, illegible votes, defective votes and abstentions not be counted in determining the number of Western Shares represented at the Meeting. Proxies that are properly signed and dated but which do not contain voting instructions or contain votes both for and against the Arrangement Resolution shall be voted in favour of the Arrangement Resolution. The procedures for voting are described in detail in the Circular.

55. As provided by the articles of incorporation of Western (the "Articles"), Western proposes that the quorum for the Meeting shall be two Western Shareholders present in person or represented by proxy that are entitled to vote at the Meeting.

Fairness of the Arrangement

56. The Board and Special Committee have, respectively, received written opinions of NBF and RBC dated December 2, 2010 to the effect that, as of the date of the opinions and

subject to the limitations and assumptions set forth therein, the consideration under the Arrangement is fair, from a financial point of view, to the Western Shareholders (other than Walter, Audley Capital and their respective affiliates and associates). In addition, the NBF Valuation and Fairness Opinion stated that, as of the date thereof and subject to the assumptions set forth therein, the fair market value of the Western Shares is in the range of \$8.50 to \$10.50 per share. Copies of the RBC Fairness Opinion and NBF Valuation and Fairness Opinion are attached as Appendices "H" and "I", respectively, to the Circular.

United States Securities Law Matters

57. Section 3(a)(10) of the United States *Securities Act of 1933*, as amended, (the "1933 Act") provides an exemption from the registration requirements of that statute for the issue of securities in exchange for other outstanding securities where the terms and conditions of the issue and exchange are approved by a court of competent jurisdiction after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue such securities shall have the right to appear.

58. In order to ensure the securities issued to Western Shareholders who are resident in the United States of America pursuant to the Arrangement will be exempt from the registration requirements of the 1933 Act pursuant to Section 3(a)(10) of the 1933 Act, it is necessary that:

- (a) the Court is advised of the intention of the parties to rely on Section 3(a)(10) prior to the hearing required to approve the Arrangement;
- (b) the Interim Order of the Court approving the relevant Meeting or meetings to approve the Arrangement specify that each Western Shareholder will have the right to appear before the Court so long as the Western Shareholder enters a Response to Petition within a reasonable time;
- (c) all the Western Shareholders be given adequate notice advising them of their rights to attend the hearing of the Court to approve the Arrangement and provide them with sufficient information necessary for them to exercise that right, and

there are no improper impediments to the appearance of those persons at the hearing;

- (d) the Court satisfy itself as to the fairness of the Arrangement to the Western Shareholders;
- (e) the Court determine, prior to approving the Final Order, that the terms and conditions of the exchanges of securities comprising the Arrangement are substantively and procedurally fair to the Western Shareholders; and
- (f) the order of the Court approving the Arrangement expressly states that the Arrangement is approved by the Court as being substantively and procedurally fair to the Western Shareholders.

59. Western has shareholders in the United States of America. Since the completion of the Arrangement involves issuances of securities to Western Shareholders in the United States of America, the Petitioner hereby gives notice to the Court of the intention to rely on section 3(a)(10) of the 1933 Act in completing the Arrangement based on the Court's approval of the Arrangement.

60. Counsel for the Petitioner has advised that certain Western Shareholders to whom securities will be issued under the Arrangement shall receive such securities in reliance on the exemption from the registration requirements of the 1933 Act contained in Section 3(a)(10) thereof based on the Court's approval of the Arrangement.

Interim Order

61. The Petitioner requests that the Interim Order include the following provisions and be in the form set out as Appendix "G" to the Circular, which is attached as Exhibit "A" hereto:

- (a) delivery of the Meeting Materials to the Western Shareholders in the manner prescribed by the Interim Order shall constitute sufficient service of the Petition, supporting Affidavit, and notice of the hearing of Petition for Final Order;

- (b) the Western Shareholders will be the only persons to whom notice is to be provided in respect of the Arrangement and the Meeting and for the manner in which such notice is to be provided;
- (c) the Western Shareholders will be the only persons who may vote on the Arrangement Resolution at the Meeting;
- (d) the Meeting may be adjourned or postponed from time to time by Western without the need for additional approval of the Court;
- (e) the record date for the Meeting will not change in respect of adjournments or postponements of the Meeting;
- (f) the requisite approval for the Arrangement Resolution will be (i) the affirmative vote of at least two-thirds of the votes cast on the Arrangement Resolution by Western Shareholders, present in person or represented by proxy at the Meeting and (ii) the affirmative vote of the shareholders necessary to obtain the Minority Approval present in person or represented by proxy at the Meeting, with each Western Shareholder having one vote for each Western Share held by such Western Shareholder;
- (g) in all other respects, the terms, restrictions and conditions of the Articles of the Petitioner Western will apply in respect of the Meeting; and
- (h) registered Western Shareholders may exercise rights of dissent with respect to their Western Shares, in connection with the Arrangement pursuant to and in the manner set forth in the Plan of Arrangement.

62.
Order.

I affirm this Affidavit in support of an application by the Petitioner for the Interim

TAB 17

This is the 2nd Affidavit of Keith Calder
in this case and was made on March 8, 2011

NO. S110653
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF AN ARRANGEMENT OF WESTERN COAL CORP. PURSUANT TO
SECTION 288 OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, CHAPTER 57, AS AMENDED.

AND

IN THE MATTER OF AN ARRANGEMENT OF WESTERN COAL CORP. AND WALTER
ENERGY, INC.

WESTERN COAL CORP.

PETITIONER

AFFIDAVIT #2 OF KEITH CALDER

I, Keith Calder, businessperson, of Suite 1000, 885 Dunsmuir Street, in the City
of Vancouver, in the Province of British Columbia, AFFIRM THAT:

1. I am a member of the Board of Directors (the "Board") and the President and
Chief Executive Officer of the Petitioner, Western Coal Corp. ("Western"), and as such have
personal knowledge of the facts and matters hereinafter deposed to, save and except where the
same are stated to be made upon information and belief, and, as to such facts, I verily believe the
same to be true.

2. For the purposes of this Affidavit #2, capitalized terms, unless otherwise defined
herein, have the meanings set out in the interim order of Master Tokarek, entered February 3,
2011 (the "Interim Order").

3. This affidavit is sworn in support of a Petition for an order:

- (a) pursuant to Section 291(4)(a) of the British Columbia *Business Corporations Act*, S.B.C. 2002, c. 57 and amendments thereto (the "BCBCA"), approving a plan of arrangement (the "Arrangement") contemplated by an arrangement agreement made as of December 2, 2010 (the "Arrangement Agreement"); and
- (b) pursuant to BCBCA Section 291(4)(c), declaring that the terms and conditions of the Arrangement are substantively and procedurally fair and reasonable with respect to the Western Shareholders.

(collectively, the "Final Order").

4. This affidavit supplements my previous Affidavit #1, sworn February 1, 2011 ("Affidavit #1"), which was filed in support of an application heard by Master Tokarek on February 2, 2011. At the conclusion of that application, Master Tokarek granted the Interim Order, a copy of which is attached hereto as Exhibit "A".

5. My Affidavit #1 describes in detail the Arrangement Agreement and the Arrangement, as well as the events leading up to the approval of the Arrangement Agreement and the Arrangement by the Board.

Compliance with the Interim Order

6. The Interim Order addressed, *inter alia*, the calling of, distribution of materials for, and level of shareholder approval required at the Meeting that was held to consider a special resolution of the Western Shareholders (the "Arrangement Resolution") to approve the Arrangement and related matters.

7. I confirm that pursuant to paragraph 10 of the Interim Order, Western distributed the Meeting Materials to:

- (a) the registered Western Shareholders, by pre-paid ordinary mail, by expedited parcel post, by courier, by delivery in person or by facsimile, addressed to each such holder at his, her or its address, as shown on the books and records of Western as of February 1, 2011 (at 5:00 p.m. (Pacific Time)), the record date for

determining Western Shareholders entitled to receive notice of and vote at the Meeting;

- (b) the non-registered Western Shareholders, by providing multiple copies of the Meeting Materials to intermediaries and registered nominees in a timely manner, in accordance with National Instrument 54-101 of the Canadian Securities Administrators; and
- (c) the directors and auditors of Western, by pre-paid ordinary mail, by expedited parcel post, by email or by facsimile, by courier, or by delivery in person, addressed to the individual directors and the auditors.

This occurred not less than twenty-one (21) days prior to the date then set for the Meeting in accordance with the Interim Order.

8. The Meeting Materials were comprised of the following documents:

- (a) the Circular;
- (b) the form of proxy;
- (c) the voting instruction form (for non-registered Shareholders); and
- (d) the Notice of Hearing of Petition.

Amendments to the Circular

9. The Circular that was distributed in compliance with the Interim Order incorporated certain amendments to the draft Circular that was attached and marked as Exhibit "A" to my Affidavit #1. Those amendments, made pursuant to paragraph 8 of the Interim Order, were intended to: (a) correct typographical and stylistic deficiencies contained in the draft Circular; (b) complete or update information that was not known at the time of my Affidavit #1; and (c) clarify certain details contained in the draft Circular. A copy of a black-lined version of the Circular, comparing the Circular to the draft Circular attached as Exhibit "A" to my Affidavit #1 (without appendices) is attached hereto and marked as Exhibit "B".

The Meeting

10. Pursuant to the Interim Order, the Arrangement Resolution must be approved by at least 66⅔% of the votes cast by the Western Shareholders, present in person or represented by proxy at the Meeting and pursuant MI 61-101, the affirmative vote of the Shareholders necessary to obtain the Minority Approval.

11. On Tuesday, March 8, 2011 at 9:00 a.m. (Toronto time) at the Westin Harbour Castle Hotel, located at 1 Harbour Square, Toronto, Ontario, Western held the Meeting for the purpose of, *inter alia*, considering the Arrangement Resolution. The text of the Arrangement Resolution may be found at Appendix "D" to the Circular.

12. I attended the Meeting, and I am advised by counsel and verily believe that the Meeting was called, held and conducted in accordance with the terms of the Articles of Western, the Interim Order and applicable laws.

13. 728 Western Shareholders that were entitled to vote at the Meeting were present in person or represented by proxy at the Meeting. Accordingly, a quorum was present at the Meeting.

14. Those Western Shareholders who were entitled to vote at the Meeting were asked to vote on the Arrangement Resolution.

15. At the Meeting, of the 200,411,418 votes cast in person or by proxy by Western Shareholders, (i) 200,122,404 votes were cast in favour of the Arrangement Resolution, representing approval by 99.86% of those Western Shareholders entitled to vote and who voted at the Meeting; and (ii) 136,486,064 votes were cast in favour of the Arrangement Resolution by Western Shareholders whose votes were eligible to be counted for the purpose of determining whether the Minority Approval was obtained, representing approval by 99.79% of those Western Shareholders entitled to vote for the purpose of determining whether the Minority Approval was obtained and who voted at the Meeting. Copies of the final scrutineers' reports confirming the voting results from the Meeting are attached hereto and marked as **Exhibit "C"**.

NO. S110653
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF AN ARRANGEMENT OF
WESTERN COAL CORP. PURSUANT TO SECTION 288
OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, CHAPTER 57, AS AMENDED

AND

IN THE MATTER OF AN ARRANGEMENT OF
WESTERN COAL CORP. AND WALTER ENERGY, INC.

WESTERN COAL CORP.

PETITIONER

AFFIDAVIT #2 OF
KEITH CALDER



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Phone: (604) 685-3456
Attention: Craig A.B. Ferris