

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 OR ARRANGEMENT OF NEW WALTER ENERGY CANADA HOLDINGS, INC., NEW WALTER CANADIAN COAL CORP., NEW BRULE COAL CORP., NEW WILLOW CREEK COAL CORP., NEW WOLVERINE COAL CORP. AND CAMBRIAN ENERGYBUILD HOLDINGS ULC

PETITIONERS

NOTICE OF APPLICATION

Name of applicants: New Walter Energy Canada Holdings, Inc., New Walter Canadian Coal Corp., New Brule Coal Corp., New Willow Creek Coal Corp., New Wolverine Coal Corp., and Cambrian Energybuild Holdings ULC (the "**New Walter Canada Group**")

To: Service List attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the applicants to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on December 13th, 2017 at 9:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order substantially in the form attached hereto as **Schedule "B"** authorizing the New Walter Canada Group to direct Energybuild Holdings Ltd. ("**Energybuild Holdings**") to enter into the Offer Letter (the "**Offer Letter**") with Speciality Carbons Limited ("**Specialty Carbons**"), substantially in the form attached to the Confidential Aziz Affidavit (defined below), and to take such additional steps and execute such additional documents as may be necessary or desirable to advance the negotiation and documentation of the transaction set out therein.
2. An Order substantially in the form attached hereto as **Schedule "C"** that the confidential affidavit of William E. Aziz sworn December 7, 2017 (to be filed) and the exhibits thereto (the "**Confidential Aziz Affidavit**") be sealed, kept confidential and not form part of the public record.
3. An Order authorizing but not requiring Cambrian Energy Build Holdings ULC ("**Cambrian**") to advance up to a further £200,000 (for an aggregate maximum of £1,100,000) to Energybuild

Group Limited ("**Energybuild Group**") or Energybuild Ltd. ("**Energybuild**"), on a secured basis, to provide working capital for Energybuild.

4. An Order substantially in the form attached hereto as **Schedule "D"** that the confidential affidavit of Philip L. Evans, to be sworn, and the exhibits thereto, (the "**Confidential Evans Affidavit**"), the confidential special report of the Monitor, to be filed (the "**Special Monitor's Report**"), and any expert report that relies on the Confidential Evans Affidavit or the Special Monitor's Report (collectively, the "**James Claim Confidential Materials**") (i) be sealed, kept confidential and not form part of the public record; and (ii) be treated as confidential and not disseminated by any party that receives a copy of any of the James Claim Confidential Materials (the "**James Claim Confidentiality Order**").
5. An Order substantially in the form attached hereto as **Schedule "B"** extending the stay of proceedings in respect of the New Walter Canada Group to February 28, 2018.

Part 2: FACTUAL BASIS

1. Reference is made to the facts set out in the Affidavit of William E. Aziz sworn December 7, 2017 (the "**Sixteenth Aziz Affidavit**").
2. Any capitalized term used but not defined below shall have the meaning given to it in the Sixteenth Aziz Affidavit.
3. On December 7, 2015, this Honourable Court granted an initial order (as amended and restated from time to time, the "**Initial Order**") in favour of the Old Walter Canada Group pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**").
4. The terms of the Initial Order, including the stay of proceedings, were subsequently extended as follows:
 - (a) to April 5, 2016 pursuant to an Order of this Honourable Court pronounced January 5, 2016;
 - (b) to June 24, 2016 pursuant to an Order of this Honourable Court pronounced March 30, 2016;
 - (c) to August 19, 2016 pursuant to an Order of this Honourable Court pronounced June 24, 2016;
 - (d) to January 17, 2017 pursuant to an Order of this Honourable Court pronounced August 16, 2016;
 - (e) to May 31, 2017 pursuant to an Order of this Honourable Court pronounced January 16, 2017;
 - (f) to October 6, 2017 pursuant to an Order of this Honourable Court pronounced May 30, 2017; and
 - (g) to December 15, 2017, pursuant to an Order of this Honourable Court pronounced October 6, 2017.

The Offer Letter

5. The New Walter Canada Group has taken a number of steps to market the assets of its U.K. subsidiaries and operations pursuant to the Order of this Honourable Court made on January 5, 2016 (the "**SISP Order**").
6. Speciality Carbons Limited ("**Speciality Carbons**") has made an offer to purchase the entire issued share capital of the Energybuild Companies from Energybuild Holdings.
7. On December 5, 2017, the New Walter Canada Group received the draft Offer Letter from Speciality Carbons.
8. The Offer Letter does not (with certain exceptions) constitute a binding agreement; rather, it sets out Speciality Carbons' preferred proposal (the "**Proposal**") for acquiring the shareholdings of the Energybuild Companies.
9. The Offer Letter contemplates that Speciality Carbons and Energybuild Holdings will negotiate a share purchase agreement based on the Proposal.
10. The Offer Letter includes a binding "exclusivity" clause giving Speciality Carbons the exclusive right to negotiate the transaction contemplated in the Offer Letter, and providing that Energybuild Holdings will not solicit any other offers for a certain period of time.

Confidential Aziz Affidavit

11. An unreacted copy of the Offer Letter is attached as an exhibit to the Confidential Aziz Affidavit.
12. The terms of the Offer Letter are commercially sensitive, and should not be disclosed before the proposed transaction successfully closes.
13. The Offer Letter contains a binding confidentiality clause which provides that the terms of the Offer Letter are confidential.
14. The Confidential Aziz Affidavit should therefore be sealed until further order of this Honourable Court.

Loan to Energybuild Group or Energybuild

15. Energybuild requires certain working capital for a period of time to finish negotiating the potential transaction with Speciality Carbons, and to permit Energybuild and the New Walter Canada Group to seek a resolution that is in the best interests of the New Walter Canada Group, the Walter U.K. Group, and their respective stakeholders.

James Claim Confidential Materials

16. The New Walter Canada Group is defending against the claim asserted by Mr. Kevin James in these CCAA proceedings. Mr. James alleges that he is entitled to royalties pursuant to a Royalty Sharing Agreement ("**RSA**"). The New Walter Canada Group denies that Mr. James has any legal entitlement to royalties pursuant to the RSA.
17. The James Application seeks damages in the amount of \$7,150,000 for breach of contract or unjust enrichment.
18. The New Walter Canada Group has filed an Application Response, which states (among other things) that the New Walter Canada Group believes the valuation of Mr. James' claim is inflated and that the New Walter Canada Group will be relying on expert evidence to be adduced on this point.

19. Both Mr. James' expert and the expert retained by the New Walter Canada Group will be able to provide a more precise valuation of the royalty claim (to the extent it is legally tenable) if they have access to certain confidential information, such as confidential mining reports, feasibility studies, reserve information, and coal assessment reports that is intended to be appended to the Confidential Evans Affidavit and certain details regarding the Conuma transaction to be set out in the Monitor's Special Report (collectively, the "**Confidential Information**").
20. The Confidential Information includes assets that were sold to Conuma in the Conuma Transaction.
21. The New Walter Canada Group is required to keep the Confidential Information confidential under the terms of the Asset Purchase Agreement made August 8, 2016 with Conuma (the "**Conuma APA**").
22. This Honourable Court approved the Conuma APA in an Approval and Vesting Order made August 16, 2016.

Stay Extension

23. The New Walter Canada Group is requesting an extension of the Stay Period until and including February 28, 2018.
24. Based on the current cash flow projections, it is expected that the New Walter Canada Group will have sufficient operating cash to continue operations during the proposed extended Stay Period.
25. The New Walter Canada Group has been proceeding in good faith and with due diligence in these proceedings.
26. 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 New Walter Canada Group has sufficient liquidity to continue its operations as currently conducted through to the end of the proposed extended Stay Period.
27. It is in the best interests of the New Walter Canada Group and all its stakeholders that the Stay Period be extended to February 28, 2018, to enable the New Walter Canada Group to finish preparing a plan of compromise and arrangement that can be put to the New Walter Canada Group's creditors, continue negotiating the transaction with Speciality Carbons, and continue litigating Mr. James's claim.

Part 3: LEGAL BASIS

The Offer Letter Should be Approved

28. This Court should approve the Offer Letter as it is a necessary step in a potential transaction for the Energybuild Companies, is the result of a court-approved SISF, and is in the best interest of the New Walter Canada Group and its creditors.
29. CCAA courts have the jurisdiction to authorize a debtor company to enter into agreements or transactions during a stay period and prior to any plan of arrangement being proposed to creditors.

Re Nortel Networks Corp, 2010 ONSC 1708 at paras 67-71.

Re Great Basin Gold Ltd, 2012 BCSC 1773 at para 16.

Re Walter Energy Canada Inc, 2017 BCSC 1968 at para 32.

30. CCAA courts have approved such agreements where they are fair and reasonable, will be beneficial to the debtor and its stakeholders, and are consistent with the purpose and spirit of the CCAA.

Re Air Canada (2004), 47 CBR (4th) 169 (Ont Sup Ct) at para 9.

Re Nortel, at para 73.

31. The Offer Letter satisfies those requirements as it will permit the New Walter Canada Group to enter into negotiations to finalize a transaction for the Energybuild Companies, and will generate greater recoveries for creditors.
32. Further, the Offer Letter and the potential transaction with Speciality Carbons has emerged from the SISP approved in the SISP Order, and the results of which have previously been approved in the Orders approving the Conuma and Remaining Assets Transactions.
33. In addition, CCAA courts have the jurisdiction to approve agreements with an exclusivity provision, and the Ontario Superior Court of Justice recently approved such an agreement.

Re US Steel Canada Inc, 2016 ONSC 7899 at paras 54-58.

34. As noted by Justice Wilton-Siegel in *US Steel*, such a provision is commercially reasonable and, in fact, it would be unreasonable to expect a party to commit resources to negotiating a potential transaction without the assurance that it could not be displaced by a subsequent offer.

US Steel, at para 55.

35. The Offer Letter has been received after extensive marketing efforts undertaken by the New Walter Canada Group, and the Speciality Carbon offer is the best offer received for the assets.
36. If a better offer was available in the market, it would likely have emerged by now and therefore the exclusivity clause does not result in any prejudice to creditors.

The Confidential Aziz Affidavit Should be Sealed

37. An unredacted copy of the Offer Letter attached to the Confidential Affidavit contains confidential business information.
38. Certain terms of the Offer Letter are commercially sensitive and should not be disclosed at any point before the potential transaction with Specialty Carbons successfully closes.
39. Further, the New Walter Canada Group is subject to a contractual obligation of confidentiality and must keep the terms of the Offer Letter confidential.
40. The Sealing Order requested is necessary to preserve this commercial interest.
41. The prejudice of disclosing the confidential terms of the Offer Letter outweighs the potential harm, if any, if the Confidential Aziz Affidavit were to be sealed.

The Further Advances to the Walter U.K. Group Should be Approved

42. As noted above, Energybuild requires certain working capital for a period of time to permit it and the New Walter Canada Group to seek a resolution for the New Walter Canada Group's U.K. subsidiaries.

43. The New Walter Canada Group has now received an offer from and, pending Court approval for the Offer Letter, is able to proceed with negotiations to finalize a transaction with Speciality Carbons.
44. Therefore, it is in the best interests of the New Walter Canada Group and its creditors that the advances be approved.

The Confidentiality Order Should be Granted

45. The James Claim Confidentiality Order should be granted because it is necessary to permit the New Walter Canada Group to defend against the James Application without breaching its confidentiality obligations, and its salutary effects outweigh any limited detrimental effects.
46. The following two-part test applies when determining whether a confidentiality order should be granted:
 - (a) Is the order necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk?
 - (b) Do the salutary effects of the order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings?

Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41 at para 53.

Sahlin v Nature Trust of British Columbia, Inc, 2010 BCCA 516 at para 6.

47. This Honourable Court has accepted and applied the *Sierra Club* test on multiple occasions in these CCAA proceedings.

Re Walter Energy Canada Inc, 2016 BCSC 1746 at para 9.

Re Walter Energy Canada Inc, 2016 BCSC 107 at para 51.

The Confidentiality Order is Necessary

48. The Confidentiality Order is necessary to protect an important commercial interest, namely the New Walter Canada Group's contractual obligations of confidentiality.
49. The New Walter Canada Group owes an ongoing duty of confidentiality to Conuma under the Conuma APA, and must maintain the confidentiality of all information relating to its coal production, sales and exportation activities carried on in Canada.
50. The Supreme Court of Canada has recognized that preserving contractual obligations of confidentiality is an important commercial objective that satisfies the first step of the *Sierra Club* test.

Sierra Club, at para 59.

51. The New Walter Canada Group has to provide the Confidential Information to Mr. James' expert and the New Walter Canada Group expert to permit those experts to value the royalty claim (if that claim is legally tenable).

52. There is no reasonable alternative that would allow the New Walter Canada Group to use the Confidential Information to respond to the James Application without violating its obligations under the Conuma APA.

The Confidentiality Order's Salutary Effects Outweigh any Negative Effects

53. The salutary effects of the Confidentiality Order outweigh any potential negative effects that may exist.
54. The salutary effects of the Order are clear: it permits the New Walter Canada Group to respond to the James Application, thereby preserving the public interest in the right of a civil litigant to present its case.

Sierra Club, at para 70.

55. The right of a civil litigant to present its case and receive a fair trial is a fundamental principle of justice.

Sierra Club, at para 70.

56. There is no deleterious impact on Mr. James as he is permitted to use the Confidential Information to the extent that it is relevant for his application.

57. While the Confidentiality Order may affect the open court principle, any impact is minimal.

58. The Confidential Information principally consists of technical mining documents prepared by and intended for an audience of sophisticated geologists and mining specialists, and is of little interest to the public. The remaining Confidential Information is commercially sensitive details in respect of the Conuma transaction.

Sierra Club, at para 78.

59. Given the technical nature of a large part of the Confidential Information, the search for truth (which underlies both the freedom of expression and the open court principle) would be better served by granting the Confidentiality Order and permitting the parties to make use of the Confidential Information in these proceedings.

Sierra Club, at para 78.

60. The Confidentiality Order is a minimal intrusion on the open court principle as it only restricts the public dissemination of the Confidential Information; it does not restrict the parties or the court's ability to access the Confidential Information, nor does it restrict the public's ability to access these CCAA proceedings more generally.

Sierra Club, at para 79.

The Stay Extension Should be Granted

61. Section 11.02(2) of the CCAA gives this Court express jurisdiction to extend the Stay Period.
62. Under s. 11.02(3), on an application seeking a stay extension, the Court will consider whether (i) the applicant has acted, and is acting, in good faith and with due diligence; and (ii) if circumstances exist that make the order appropriate.
63. The New Walter Canada Group has been acting in good faith and with due diligence in these proceedings, as a result of which it is able to propose the CCAA Plan and is in a position to make the distribution contemplated therein.

64. It is appropriate to grant the stay extension because such an Order will permit the New Walter Canada Group to finish preparing a plan of compromise and arrangement that can be put to the New Walter Canada Group's creditors, continue negotiating the transaction with Speciality Carbons, and continue litigating Mr. James's claim.
65. Therefore, the requested stay extension should be granted.

Other Grounds

66. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.
67. *Supreme Court Civil Rules*, including Rules 8-1 and 13-1.
68. The inherent and equitable jurisdiction of this Honourable Court and such further and other legal bases and authorities as counsel may advise and this Honourable Court may permit.

Part 4: MATERIAL TO BE RELIED ON

1. The Sixteenth Aziz Affidavit;
2. The Confidential Aziz Affidavit;
3. Monitor's 14th Report, to be filed;
4. Pleadings and other materials filed herein; and
5. Such further and other materials as counsel may advise and this Honourable Court may permit.

The applicant(s) estimate(s) that the application will take 1 hour.

This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master. The Honourable Madam Justice Fitzpatrick is seized of these proceedings and the hearing of this application has been arranged with Trial Scheduling.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days of service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;

- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: December 7, 2017



Lawyers for the Petitioners
Osler, Hoskin & Harcourt LLP
(Marc Wasserman, Patrick Riesterer & Mary Paterson)

To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
<input type="checkbox"/>	with the following variations and additional terms:
Date: _____	Signature of
	<input type="checkbox"/> Judge <input type="checkbox"/> Master

SCHEDULE "A"

(see attached)

SERVICE LIST

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SCHEDULE "B"

(see attached)

NO. S-1510120
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND

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

AND

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF NEW WALTER
ENERGY CANADA HOLDINGS, INC., NEW WALTER CANADIAN COAL CORP., NEW BRULE COAL
CORP., NEW WILLOW CREEK COAL CORP., NEW WOLVERINE COAL CORP. AND CAMBRIAN
ENERGYBUILD HOLDINGS ULC

PETITIONERS

**ORDER MADE AFTER APPLICATION
(Stay Extension & Energybuild Order)**

BEFORE THE HONOURABLE)
MADAM JUSTICE FITZPATRICK) TUESDAY, THE 13TH DAY OF
) DECEMBER, 2017

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 13th day of December, 2017; AND ON HEARING Marc Wasserman and Patrick Riesterer, counsel for the Petitioners, Peter Reardon, counsel for KPMG Inc. and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the 16th Affidavit of William E. Aziz sworn December 7, 2017, 17th Confidential Affidavit of William E. Aziz sworn December 7, 2017 (the "**Confidential Aziz Affidavit**") and the Fourteenth Report of KPMG Inc. in its capacity as Monitor dated December 7, 2017;

THIS COURT ORDERS AND DECLARES THAT:

SERVICE AND DEFINITIONS

1. The time for service of the notice of application for this order is hereby abridged and deemed good and sufficient and this application is properly returnable today.
2. All capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Initial Order in these proceedings dated December 7, 2015 (the "**Initial Order**").

Draft

ENERYBUILD OFFER LETTER

3. The Petitioners are hereby authorized but not directed to take any steps necessary to direct Energybuild Ltd. to enter into the offer letter provided by Speciality Carbons Limited, substantially in the form attached to the Confidential Aziz Affidavit, and to take such additional steps and execute such additional documents as may be necessary or desirable to advance the negotiation and documentation of the transaction set out therein.

LOAN TO ENERGYBUILD ENTITIES

4. Cambrian Energybuild Holdings ULC is hereby authorized, but not directed, to make such further loan or loans to Energybuild Group Limited or Energybuild Ltd., on a secured basis, to provide working capital to Energybuild Ltd. not to exceed an aggregate amount of £1,100,000, including the £900,000.00 loaned to pursuant to earlier orders of this Court.

STAY EXTENSION

5. The Stay Period, as defined in paragraph 18 of the Initial Order, is hereby further extended up to and including February 28, 2018.

GENERAL

6. Endorsement of this Order by counsel appearing, other than counsel for the Petitioners, is hereby dispensed with.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunals, regulatory or administrative bodies, including any Court or administrative tribunal of any Federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

Draft

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:

Patrick Riesterer
Counsel for the Petitioners

BY THE COURT

REGISTRAR

Draft

NO. S-1510120
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND

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

AND

IN THE MATTER OF THE PLAN OF COMPROMISE AND
ARRANGEMENT OF NEW WALTER ENERGY CANADA
HOLDINGS, INC., NEW WALTER CANADIAN COAL CORP.,
NEW BRULE COAL CORP., NEW WILLOW CREEK COAL
CORP., NEW WOLVERINE COAL CORP. AND CAMBRIAN
ENERGYBUILD HOLDINGS ULC

PETITIONERS

ORDER MADE AFTER APPLICATION
(Stay Extension Order)

OSLER HOSKIN & HARCOURT LLP
Barristers & Solicitors
1055 West Hastings Street
Suite 1700, The Guinness Tower
Vancouver, BC V6E 2E9

Tel. No. 416.862.4924
Fax No. 416.862.6666

Client Matter No. 1164807

Draft

SCHEDULE "C"

(see attached)

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 OR ARRANGEMENT OF NEW WALTER ENERGY
CANADA HOLDINGS, INC., NEW WALTER CANADIAN COAL CORP., NEW BRULE COAL CORP.,
NEW WILLOW CREEK COAL CORP., NEW WOLVERINE COAL CORP. AND CAMBRIAN
ENERGYBUILD HOLDINGS ULC

PETITIONERS

SEALING ORDER

BEFORE THE HONOURABLE
MADAM JUSTICE FITZPATRICK

)
)
)

WEDNESDAY, THE 13TH DAY OF
DECEMBER, 2017

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 13th day of December, 2017; AND ON HEARING Marc Wasserman and Patrick Riesterer, counsel for the Petitioners (collectively, the "**Walter Canada Group**"), Peter Reardon, counsel for KPMG Inc. in its capacity as the court-appointed monitor of the Walter Canada Group (the "**Monitor**") and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed herein;

THIS COURT ORDERS THAT:

1. Access to Sealed Items permitted by:
[Select all applicable]

- Counsel of Record
 Parties on Record
 Further Court Order
 Others: _____

Items to be sealed

Document Name	Date Filed (Date on Court Stamp)	Number of copies filed, including any extra copies for the judge	Duration of sealing order	Sought	Granted	
					Yes	No
Confidential Affidavit #17 of William E. Aziz sworn December 7, 2017	December 13, 2017	two	Until further order	[X]	[X]	<input type="checkbox"/>

2. Endorsement of this Order by counsel appearing, other than counsel for the Walter Canada Group, is hereby dispensed with.

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:

Patrick Riesterer
Counsel for the Petitioners

BY THE COURT

REGISTRAR

NO. S-1510120
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

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

AND

IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF NEW WALTER ENERGY
CANADA HOLDINGS, INC., NEW WALTER CANADIAN
COAL CORP., NEW BRULE COAL CORP., NEW
WILLOW CREEK COAL CORP., NEW WOLVERINE
COAL CORP. AND CAMBRIAN ENERGYBUILD
HOLDINGS ULC

PETITIONERS

ORDER MADE AFTER APPLICATION

OSLER HOSKIN & HARCOURT LLP
Barristers & Solicitors
1055 West Hastings Street
Suite 1700, The Guinness Tower
Vancouver, BC V6E 2E9

Tel. No. 416.862.5947
Fax No. 416.862.6666

Client Matter No. 1164807

SCHEDULE "D"

(see attached)

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 OR ARRANGEMENT OF NEW WALTER ENERGY
CANADA HOLDINGS, INC., NEW WALTER CANADIAN COAL CORP., NEW BRULE COAL CORP.,
NEW WILLOW CREEK COAL CORP., NEW WOLVERINE COAL CORP. AND CAMBRIAN
ENERGYBUILD HOLDINGS ULC

PETITIONERS

SEALING ORDER
(James Claim Confidentiality Order)

BEFORE THE HONOURABLE)
MADAM JUSTICE FITZPATRICK) WEDNESDAY, THE 13TH DAY OF
DECEMBER, 2017

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 13th day of December, 2017; AND ON HEARING Marc Wasserman and Patrick Riesterer, counsel for the Petitioners (collectively, the "**Walter Canada Group**"), Peter Reardon, counsel for KPMG Inc. in its capacity as the court-appointed monitor of the Walter Canada Group (the "**Monitor**") and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed herein;

THIS COURT ORDERS THAT:

- 1. Access to Sealed Items permitted by:
 - Counsel of Record
 - Parties on Record
 - Further Court Order
 - Others:
 1. Counsel to the Petitioners
 2. Counsel to Mr. Kevin James
 3. KPMG Inc., Monitor
 4. Counsel to KPMG Inc.
 5. Experts retained by

any person permitted
access to the materials
per this Order

Items to be sealed

Document Name	Date Filed (Date on Court Stamp)	Number of copies filed, including any extra copies for the judge	Duration of sealing order	Sought	Granted	
					Yes	No
1. Confidential Special Report of the Monitor dated on or about December 15, 2017	On or about December 15, 2017	two	Until further order	[X]	[X]	<input type="checkbox"/>
2. Confidential Affidavit #1 of Philip L. Evans Jr. sworn on or about December 14, 2017	On or about December 15, 2017	two	Until further order	[X]	[X]	<input type="checkbox"/>
3. The confidential affidavit of the expert retained by the Petitioners	On or about December 15, 2017	two	Until further order	[X]	[X]	<input type="checkbox"/>
4. Any other affidavit or evidentiary material referencing the materials contained in Documents 1, 2, or 3 are to be sealed pursuant to this	As filed	two	Until further order	[X]	[X]	<input type="checkbox"/>

order.					
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2. Endorsement of this Order by counsel appearing, other than counsel for the Walter Canada Group, is hereby dispensed with.

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:

Patrick Riesterer
Counsel for the Petitioners

BY THE COURT

REGISTRAR

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

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IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF NEW WALTER ENERGY
CANADA HOLDINGS, INC., NEW WALTER CANADIAN
COAL CORP., NEW BRULE COAL CORP., NEW
WILLOW CREEK COAL CORP., NEW WOLVERINE
COAL CORP. AND CAMBRIAN ENERGYBUILD
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PETITIONERS

ORDER MADE AFTER APPLICATION

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Client Matter No. 1164807

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

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NEW BRULE COAL CORP., NEW WILLOW CREEK COAL
CORP., NEW WOLVERINE COAL CORP. AND CAMBRIAN
ENERGYBUILD HOLDINGS ULC

PETITIONERS

**NOTICE OF APPLICATION
(Stay Extension & Energybuild Order)**

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