



COM  
July 9, 2021  
Justice Romaine

COURT FILE NUMBER 2101-05019  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANT IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF COALSPUR MINES (OPERATIONS)  
LTD.  
DOCUMENT THIRD REPORT OF FTI CONSULTING CANADA INC., IN  
ITS CAPACITY AS MONITOR OF COALSPUR MINES  
(OPERATIONS) LTD.

**June 28, 2021**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**MONITOR**

FTI Consulting Canada Inc.  
1610, 520 5<sup>th</sup> Ave SW  
Calgary, AB T2P 3R7  
Deryck Helkaa / Dustin Olver  
Telephone: (403) 454-6031 / (403) 454-6032  
Fax: (403) 232-6116  
E-mail: [deryck.helkaa@fticonsulting.com](mailto:deryck.helkaa@fticonsulting.com)  
E-mail: [dustin.olver@fticonsulting.com](mailto:dustin.olver@fticonsulting.com)

**COUNSEL**

Blake, Cassels & Graydon LLP  
3500, 855 - 2nd Street SW  
Calgary, AB, T2P 4K7  
Kelly Bourassa / James Reid  
Telephone: (403) 260-9697 / (403) 260-9731  
Fax: (403) 260-9700  
E-mail: [kelly.bourassa@blakes.com](mailto:kelly.bourassa@blakes.com)  
E-mail: [james.reid@blakes.com](mailto:james.reid@blakes.com)

**THIRD REPORT OF THE MONITOR**

**Table of Contents**

INTRODUCTION ..... 3

PURPOSE..... 3

TERMS OF REFERENCE ..... 4

ACTIVITIES OF THE MONITOR..... 5

CASH FLOW VARIANCE..... 5

RIDLEY AGREEMENTS DISCLAIMER NOTICE..... 7

FINANCIAL HARDSHIP TO RIDLEY ..... 15

CRITICAL SUPPLIER CHARGE ..... 20

STAY EXTENSION..... 20

RESTRICTED COURT ACCESS ORDER..... 21

CONCLUSIONS AND RECOMMENDATION ..... 22

Appendix “A” – Ridley Disclaimer

Appendix “B” – May 16, 2021 “Reasons for Disclaimer” Letter from Coalspur to Ridley

## INTRODUCTION

1. On April 26, 2021, Coalspur Mines (Operations) Ltd. (“**Coalspur**” or the “**Company**”) was granted an initial order (the “**Initial Order**”) to commence proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).
2. The Initial Order established a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Company until May 6, 2021 and appointed FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings (the “**Monitor**”). The Stay of Proceedings has since been extended until and including July 23, 2021 by a subsequent Amended and Restated Initial Order (the “**ARIO**”) granted by this Honourable Court on May 6, 2021 (the “**Comeback Hearing**”).

## PURPOSE

3. The purpose of this Third Report of the Monitor (the “**Third Report**”) is to provide this Honourable Court and the Company’s stakeholders with information and the Monitor’s comments with respect to the following:
  - a. the activities of the Monitor since the Monitor’s Second Report dated June 11, 2021 (the “**Second Report**”);
  - b. Coalspur’s actual cash receipts and disbursements for the two-week period ended June 18, 2021, as compared to the Second Cash Flow Statement that was presented to this Honourable Court as attached to the Second Report;
  - c. the notice of disclaimer sent by Coalspur to disclaim three pre-filing agreements (the “**Ridley Agreements**”) with Ridley Terminals Inc. (“**Ridley**”);

- d. Coalspur's application for a declaration that Trafigura Pte. Ltd ("**Trafigura**") is a critical supplier to Coalspur and for the granting of a critical supplier charge in favour of Trafigura;
- e. Coalspur's application for an extension of the Stay of Proceedings until and including September 3, 2021, or such further and other date as this Court may consider appropriate;
- f. the application seeking an Order sealing the confidential supplemental report to this Third Report (the "**Supplemental Report**"); and
- g. the Monitor's conclusions and recommendations.

#### **TERMS OF REFERENCE**

- 4. In preparing this Third Report, the Monitor has relied upon certain information (the "**Information**") including Coalspur's unaudited financial information, books and records and discussions with senior management ("**Management**").
- 5. Except as described in this Third Report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
- 6. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
- 7. Future oriented financial information reported to be relied on in preparing this report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.

8. Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.
9. Capitalized terms not otherwise defined herein are as defined in the First Report or the Second Report.

#### **ACTIVITIES OF THE MONITOR**

10. Since the Second Report, the Monitor's activities have included, but have not been limited to, the following:
  - a. monitoring Coalspur's operations and cash flows;
  - b. discussing various restructuring options and initiatives with Coalspur;
  - c. corresponding with various creditors in respect of the CCAA Proceedings;
  - d. monitoring the progress of the litigation schedule established by the Court in respect of the disclaimer of the Ridley Agreements, including reviewing affidavits filed and having counsel to the Monitor attend questioning on affidavits; and
  - e. maintaining and updating the CaseLines File site with the documents filed in this Action in accordance with the Caselines Service Order of this Court dated June 16, 2021.

#### **CASH FLOW VARIANCE**

11. The Company's actual cash flows in comparison to those contained in the Second Cash Flow Statement for the two-week period June 5, 2021 to June 18, 2021 are summarized below:

<b>Cash Flow Variance Analysis</b>				
<b>For the Two Weeks Ended June 18, 2021</b>				
<i>(USD thousands)</i>	<b>Actual</b>	<b>Forecast</b>	<b>Variance</b>	<b>Variance</b>
			<b>\$</b>	<b>%</b>
<b>Operating Receipts</b>				
Sales Receipts	\$ 11,466	\$ 11,466	\$ -	0%
<b>Total Operating Receipts</b>	<u>11,466</u>	<u>11,466</u>	<u>-</u>	<u>0%</u>
<b>Operating Disbursements</b>				
Payroll and Benefits	1,434	1,465	(31)	-2%
Contractors	456	519	(63)	-12%
Rent	-	9	(9)	-100%
Transportation	5,230	5,682	(452)	-8%
Royalties	-	595	(595)	-100%
Fuel	1,035	1,017	18	2%
Power	722	760	(38)	-5%
Material & Supplies	5,908	6,564	(655)	-10%
CCAA Professional Fees	-	670	(670)	-100%
Critical Vendors Accounts Payable	14	-	14	100%
Net Taxes	-	210	(210)	-100%
Trafigura Payment	1,500	1,500	-	0%
Vista Energy Management Fee	250	250	-	0%
<b>Total Operating Disbursements</b>	<u>16,549</u>	<u>19,241</u>	<u>(2,691)</u>	<u>-14%</u>
<b>Net Change in Cash from Operations</b>	<u>(5,083)</u>	<u>(7,774)</u>	<u>2,691</u>	<u>-35%</u>
<b>Financing</b>				
Interim Financing Draw (Repayment)	6,743	6,743	-	0%
FX Impacts	<u>(273)</u>	<u>-</u>	<u>(273)</u>	<u>100%</u>
<b>Net Change in Cash from Financing</b>	<u>6,470</u>	<u>6,743</u>	<u>(273)</u>	<u>-4%</u>
<b>Net Change in Cash</b>	<u>1,387</u>	<u>(1,031)</u>	<u>2,418</u>	<u>-235%</u>
<b>Opening Cash</b>	<u>1,926</u>	<u>1,976</u>	<u>(51)</u>	<u>-3%</u>
<b>Ending Cash</b>	<u>\$ 3,313</u>	<u>\$ 945</u>	<u>\$ 2,368</u>	<u>251%</u>

- a. operating receipts are in line with budget;
- b. operating disbursements are approximately \$2.7 million lower than forecast due to the following significant variances:
  - i. royalty and CCAA professional fee lines are lower than forecast mostly due to timing and are expected to reverse in future periods; and
  - ii. a favourable variance for transportation and materials and supplies due to actual expenditures incurred being lower than forecasted, these savings are expected to be permanent; and

- c. financing related amounts are approximately \$273,000 lower than forecast due to changes in the USD to CAD foreign exchange rates.
12. Coalspur's actual cash flow is materially in line with the Second Cash Flow Statement. The Monitor is of the view that the assumptions contained within the Second Cash Flow Statement continue to be reasonable. Accordingly, there is no need to revise the Second Cash Flow Statement at this time and the Monitor will continue to report actual results against the Second Cash Flow Statement.

### **RIDLEY AGREEMENTS DISCLAIMER NOTICE**

13. The disclaimer or resiliation of agreements by a debtor company is governed by Section 32 of the CCAA.
14. The Ridley Agreements include:
- a. a January 1, 2018 Terminal Services Agreement between Ridley and Coalspur (the "**Ridley Terminal Services Agreement**");
  - b. a July 1, 2020 settlement agreement and mutual release between Ridley and Coalspur; and
  - c. a February 13, 2021 letter agreement between Ridley and Coalspur.
15. On May 7, 2021, after consultation with and approval of the Monitor, Coalspur issued a notice under Section 32 of the CCAA to disclaim the Ridley Agreements. A copy of the disclaimer (the "**Ridley Disclaimer**") is attached as Appendix "A".
16. On May 10, 2021, Ridley's counsel advised Coalspur that it intended to dispute the Ridley Disclaimer and requested reasons for the disclaimer in accordance with Section 32(8) of the CCAA.

17. Coalspur provided the reasons for the disclaimer to Ridley's counsel on May 16, 2021. A copy of Coalspur's letter outlining the reasons for disclaimer is attached as Appendix "B". On May 21, 2021, Ridley filed application materials (the "**Ridley Application Materials**"), as contemplated by Section 32(2) of the CCAA, requesting an order of the Court, among other things, declaring that the Ridley Agreements are not to be disclaimed or resiliated. The Ridley Application Materials reviewed by the Monitor included:
- a. an application filed May 21, 2021 seeking an order of the Court, among other things, declaring that the Ridley Agreements are not to be disclaimed or resiliated;
  - b. the Affidavit of Cordell Dixon sworn on May 21, 2021 (the "**Dixon Affidavit**") and related transcript of questioning; and
  - c. the Affidavit of Robert Booker sworn May 21, 2021 (the "**Booker Affidavit**") and related transcript of questioning.
18. Coalspur and Ridley have filed evidence and will file legal briefs and present oral arguments to the Court on the factors to be considered by the Court in respect of the proposed Ridley Disclaimer. The Monitor acknowledges and emphasizes that it is the Court, and not the Monitor, that is the only authority for the adjudication of the matters in dispute.
19. However, whether the Monitor has approved the disclaimer is one of the factors to be considered by the Court and in this case the Monitor has approved the Ridley Disclaimer. The Monitor believes it is appropriate to describe to the Court the considerations that went into its decision to approve the issuance of the Ridley Disclaimer.
20. Section 32(4)(a) does not provide guidance as to what factors the Monitor should consider in determining whether to approve a proposed disclaimer, and the Monitor and its counsel are not aware of any authority that has considered this provision, specifically, since its enactment.



21. However, the Canadian Association of Insolvency and Restructuring Professionals have issued Standards of Professional Practice (the “**CAIRP Standards**”) which provide guidance to Monitor’s on a number of issues, including the disclaimer of agreements. The CAIRP Standards provide, among other things, that:

- a. “13.3.1 The Monitor should gain an understanding of the reason/purpose of the proposed disclaimer or resiliation, the benefits and costs to the Company resulting from such disclaimer or resiliation, and the impact of the disclaimer or resiliation, or the absence of such disclaimer or resiliation, as the case may be, on the Company and its proceedings under the Act.”; and
- b. “13.4.1 (f) In the case of a disclaimer or resiliation, a statement whether, in the Monitor’s opinion, such disclaimer or resiliation of the Agreement enhances the prospects of the Debtor making a viable proposal or arrangement, or whether the disclaimer or resiliation is expected to otherwise benefit the Debtor or its stakeholders as a whole.”

22. In considering, initially, whether to approve and recommend the Ridley Disclaimer, the Monitor considered the CAIRP Standards (informed itself of the facts relevant to the tests and considered whether the disclaimer would enhance the Coalspur’s prospects of a viable proposal or otherwise benefit the Coalspur or its stakeholders). The Monitor then further considered the balance of Section 32(4) of the CCAA including whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.

23. The Monitor's initial approval of the Ridley Disclaimer was based on the information available to the Monitor and its counsel at that time. In addition to the information available to the Monitor at the time it approved the Ridley Disclaimer, the Monitor has now had the opportunity to review and consider the Ridley Application Materials and has been considered this information in the analysis provided herein. The facts and commentary set out herein are provided to describe to the Court and other interested parties the basis and rationale for the Monitor's approval of the Ridley Disclaimer. However, the views of the Monitor are in no way intended to be determinative of any legal issue before the Court.

Monitor's understanding of the Ridley Agreements leading up to the Ridley Disclaimer

24. Prior to approving the Ridley Disclaimer, the Monitor gained an understanding of the Ridley Agreements through discussions with Coalspur's management. The Monitor also discussed and analyzed the related benefits and costs to Coalspur that would result if the Ridley Agreements were disclaimed as well as impacts on Coalspur and its operations in the absence of such a disclaimer.

25. Through its review, the Monitor came to understand the following:

- a. the Ridley Agreements document the terms on which Ridley provides necessary terminal services (“**Terminal Services**”) to Coalspur to enable Coalspur to load their coal inventory onto ocean-going vessels for shipment to customers overseas;
- b. in Coalspur's view, the Ridley Agreements were above market and contained significant financial penalties for failure to deliver minimum volume requirements which reduced Coalspur's operational and financial flexibility;
- c. Coalspur had identified, and was in active discussions with, an alternative vendor who could supply the necessary Terminal Services on superior financial terms than those contained in the Ridley Agreements;

- d. switching to the alternative vendor was also expected to result in additional transportation cost savings and other benefits due to the geographic location of the alternative vendor; and
  - e. Coalspur had approached Ridley and attempted to re-negotiate the Ridley Agreements starting in September 2020 and continuing over several months. The goal of the re-negotiation was to bring the financial terms of the Ridley Agreements more in line with market rates and to come to a mutually agreeable settlement that would improve the future financial performance and financial flexibility of Coalspur. As noted in the Booker Affidavit, the Monitor understands that the parties were close to reaching an agreement whereby Coalspur would buyout the Ridley Agreements in exchange for payment of \$18 million. However, those negotiations ultimately failed, and Ridley unilaterally terminated the without prejudice negotiations on April 23, 2021.
26. The Monitor understands that Coalspur believed that the Ridley Agreements needed to be disclaimed. The disclaimer would reduce Coalspur's cost structure as well as improve its operational flexibility to position itself for improved future financial performance and cash flow and, ultimately, as further discussed below, to enhance Coalspur's prospects of a viable restructuring or to otherwise benefit the Company or its stakeholders.

Enhancing the prospects of a viable compromise or arrangement

27. After reviewing the Ridley Agreements, including their financial terms, considering the alternative Terminal Services options available to Coalspur and Coalspur's overall financial situation, the Monitor concluded that:
- a. the financial terms of the Ridley Agreements are more onerous than those available to Coalspur through the alternate vendor of Terminal Services;
  - b. the Ridley Agreements include stricter and more excessive minimum volume requirements comparative to those available to Coalspur through the alternate

vendor of Terminal Services that could result in significant future financial penalties if Coalspur encounters operational issues and is unable to deliver the required minimum volumes;

- c. switching Terminal Services suppliers will result in significant additional cost savings to Coalspur (referred to as “**Terminal Services Savings**”); and
- d. disclaiming the Ridley Agreements results in significant additional cost savings (the “**Additional Transportation Savings**”) that are available due to the change in rail routes from the Ridley Terminal to the Westshore Terminal (as discussed and defined below), which in turn would enhance the prospects of a viable compromise or arrangement being made in respect of Coalspur.

#### Terminal Services Savings

28. In considering the Ridley Agreements, the Monitor had the benefit of comparing the financial terms contained in the Ridley Agreements to terms being actively negotiated and offered by an alternative terminal located in Roberts Bank, British Columbia operated by Westshore Terminals Limited Partnership (“**Westshore**”). As noted above, leading up to the Ridley Disclaimer, the Monitor was advised that Coalspur and Westshore were in discussions whereby Westshore was offering Terminal Services to Coalspur at significantly lower rates than those contained in the Ridley Agreements.

29. The Monitor understands that these discussions resulted in Coalspur entering into an amended and restated shipping agreement with Westshore made effective as of May 1, 2021 (the “**Westshore Agreement**”). The financial terms of the Westshore Agreement and the Ridley Agreements are commercially sensitive and, accordingly, the Monitor has prepared the Supplemental Report that compares the financial terms of the Ridley Agreements to the Westshore Agreement. The total savings achieved for Terminal Services by switching from the Ridley Agreements to the Westshore Agreement through April 2027 are estimated to be \$28.4 million, with \$6.3 million accruing in 2021.

### Additional Transportation Savings

30. In addition to the estimated Terminal Services Savings that would result from switching Terminal Services suppliers from Ridley to Westshore, the following incremental savings are estimated accrue to Coalspur in conjunction with shipping to the Westshore Terminal (as defined below).
31. The Ridley terminal (“**Ridley Terminal**”) is located in Prince Rupert, British Columbia and the Westshore terminal (“**Westshore Terminal**”) is located in Roberts Bank, British Columbia. The location of the Ridley Terminal is approximately 1,250 kilometres from the Vista Coal Mine Project whereas the Westshore Terminal is 25% closer (approximately 950 kilometres from the Vista Coal Mine Project). The shorter distance between the Vista Coal Mine Project and the Westshore Terminal results in significant transportation cost savings as follows:
- a. Rail – On May 7, 2021, Coalspur entered into an amendment agreement with its rail transportation provider. The rail transportation supplier agreed to give Coalspur a significant discount to its existing pricing for shipments destined for the Westshore Terminal when the average price of Newcastle coal for the prior month is below \$100 USD/mt; and
  - b. Fuel surcharge and carbon taxes – the Westshore Terminal being 25% closer to the Vista Coal Mine Project significantly reduces the kilometres travelled which in turn reduces Coalspur’s fuel surcharge and carbon tax costs.

32. The details of the Monitor's estimated transportation cost savings achieved by switching from the Ridley Terminal to the Westshore Terminal are contained in the Supplemental Report as the details are commercially sensitive both to Coalspur and its service providers. The Monitor estimates total transportation savings to range between \$44.2 million through April 2027 with \$1.7 million accruing in 2021 under a high case scenario to \$10.8 million through April 2027, with \$1.1 million accruing in 2021 under a low case scenario. The low case scenario assumes pricing above \$100 USD/mt and, therefore, no discount pursuant to the terms of the amended rail transportation agreement.
33. Overall, when combining the superior Terminal Services rates contained in the Westshore Agreement with the transportation cost savings benefits achieved by delivering coal to the Westshore Terminal, the Monitor estimates Coalspur will save approximately \$39.2 million to \$72.4 million (on a non-discounted basis) through April 2027 with \$7.4 million to \$8.0 million accruing in 2021. Both the low and high scenarios are summarized in the tables below, respectively, with the low case reflecting nil discounts under the amended rail transportation agreement (assumes average pricing price of Newcastle coal is above \$100 USD/mt) comparative to the high case scenario which assumes full discount received under the amended rail transportation agreement (average price of Newcastle coal is below \$100 USD/mt).

<b>Low Case Scenario</b>								
<i>(USD 000s)</i>	2021	2022	2023	2024	2025	2026	2027	TOTAL
Terminal Services Savings	\$ 6,309	\$ 8,173	\$ 6,377	\$ 3,760	\$ 2,162	\$ 1,271	\$ 385	\$ 28,436
Additional Transportation Savings	1,080	1,620	1,620	1,620	1,620	1,620	1,620	10,800
<b>Estimated Total Savings</b>	<b>\$ 7,389</b>	<b>\$ 9,793</b>	<b>\$ 7,997</b>	<b>\$ 5,380</b>	<b>\$ 3,782</b>	<b>\$ 2,891</b>	<b>\$ 2,005</b>	<b>\$ 39,236</b>

<b>High Case Scenario</b>								
<i>(USD 000s)</i>	2021	2022	2023	2024	2025	2026	2027	TOTAL
Terminal Services Savings	\$ 6,309	\$ 8,173	\$ 6,377	\$ 3,760	\$ 2,162	\$ 1,271	\$ 385	\$ 28,436
Additional Transportation Savings	1,700	7,049	7,049	7,049	7,049	7,049	7,049	43,997
<b>Estimated Total Savings</b>	<b>\$ 8,009</b>	<b>\$ 15,222</b>	<b>\$ 13,427</b>	<b>\$ 10,810</b>	<b>\$ 9,211</b>	<b>\$ 8,320</b>	<b>\$ 7,434</b>	<b>\$ 72,433</b>

### Monitor's approval of the Ridley Disclaimer

34. On May 7, 2021, Coalspur requested that the Monitor approve the Ridley Disclaimer. After reviewing the Ridley Agreements, gaining an understanding of the reason/purpose of the proposed disclaimer and considering the factors outlined in Section 32(4) of the CCAA, the Monitor approved the Ridley Disclaimer.
35. In the Monitor's view, the significant savings as outlined above, will enhance the prospects of a viable compromise or arrangement being made in respect of Coalspur.

### **FINANCIAL HARDSHIP TO RIDLEY**

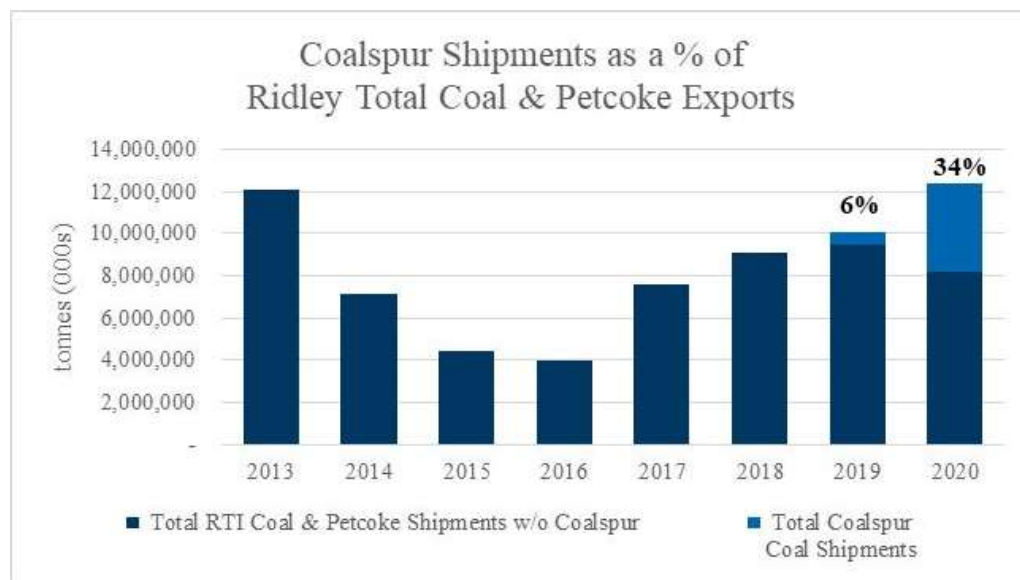
36. At the time of the Ridley Disclaimer, the Monitor had minimal information in respect of Ridley's current financial situation as it is a privately held company. In considering whether to approve the Ridley Disclaimer, the Monitor was cognizant of the statutory rights of Ridley to challenge the Ridley Disclaimer notice, at which time it would be open to Ridley to adduce evidence in respect of any significant financial hardship.
37. In the Ridley Application Materials filed in connection with Ridley's application to have the Court prohibit the Ridley Disclaimer, Ridley has advised that it will suffer significant financial hardship as a result of the Ridley Disclaimer.
38. In determining whether there is financial hardship, the facts and circumstances specific to the situation must be considered. The Monitor provides its comments below with respect to the potential financial hardship to Ridley to assist the Court in its consideration of the issue.

39. The Ridley Terminal has been in operation for over 35 years. Originally established in 1983, Ridley was a federal crown corporation which operated the Ridley Terminal on Ridley Island in Prince Rupert, British Columbia. The Ridley Terminal transfers bulk commodities such as metallurgical coal, thermal coal and petroleum coal from rail cars onto ocean-going vessels. In 2018 the Federal Government initiated a sales process supervised by the Canadian Development Investment Corporation (“CDIC”) to divest of Ridley to the private sector.
40. On July 11, 2019, CDIC announced an agreement had been reached to sell Ridley. The majority (90%) to be purchased by Riverstone Holdings LLC and AMCI Group and the remaining 10% to be owned by a limited partnership between Lax Kw’alaams and Metlakatla First Nation. This transaction closed on December 11, 2019.
41. To assess the potential financial impact that the Ridley Disclaimer would have on Ridley the Monitor considered:
- a. the volume of coal historically delivered by Coalspur to the Ridley Terminal compared to the total coal exported at the Ridley Terminal in order to determine how material Coalspur is to Ridley; and
  - b. information included in the Ridley Application Materials that would demonstrate that the loss of revenues related to Coalspur’s production would result in significant financial hardship to Ridley.



## Historical Coal Shipments

42. The below graph provides a summary of the total metric tonnes of coal (metallurgical coal, thermal coal and petroleum coke) exported through the Ridley Terminal for the past eight years and identifies the volume delivered by Coalspur in order to provide an assessment of historical concentration and reliance on revenue from Coalspur relative to the total operations. The Monitor notes that the historical coal shipments are only illustrative; however, the information does provide information with respect to the overall reliance by Ridley on Coalspur from a historical perspective. Volumes were obtained from the Prince Rupert Port Authority website (<https://www.rupertport.com/>).



43. The Ridley Terminal Services Agreement was dated January 1, 2018. Prior to 2019, Ridley did not receive any coal supply from Coalspur. Coalspur commenced production in 2019 and, therefore, Coalspur's first deliveries to the Ridley Terminal started in May 2019. In 2019 and 2020, Coalspur made up approximately 6% and 34%, respectively, of the coal delivered to the Ridley Terminal. The loss of Coalspur production would bring Ridley exported volumes approximately in line with levels that the Ridley Terminal operated in 2017 and 2018 (volumes were significantly reduced from 2015 to 2016 due to harsh market conditions and multiple Ridley customers suspending mining operations).

44. The Monitor also notes that in 2016 Ridley secured a contract with AltaGas Ltd. to sub-lease a part of the Ridley Terminal to construct the Ridley Island Propane Export Terminal (the “**RIPET**”) for the purpose of exporting liquefied petroleum gas (“**LPG**”). The RIPET was part of Ridley’s diversification initiative and is part of Ridley’s effort to expand operations into LPG, thereby creating an additional revenue stream for Ridley.

Information in Ridley Application Materials Demonstrating Significant Financial Hardship

45. The Monitor reviewed the Booker Affidavit and the Dixon Affidavit for evidence provided to support the claim of significant financial hardship.

46. The aspects outlined by Ridley in respect of their claim that the Ridley Disclaimer will cause significant financial hardship are as follows:

- a. Ridley made substantial capital investments that they would not have made if it was not for the exclusivity clause in the Ridley Agreements; and
- b. if the Ridley Disclaimer is upheld, it will cause Ridley to default on a loan agreement with one of its lenders and, according to paragraph 60 of the Booker Affidavit, will “push Ridley to the brink of insolvency”.

47. The Monitor does not consider the mere fact that Ridley historically spent capital to be a relevant factor when assessing whether to allow an agreement to be disclaimed. Rather, the focus should be whether the disclaimer would cause significant financial hardship to Ridley with consideration given to the current financial affairs of Ridley and future financial projections if the Ridley Disclaimer is upheld. While previously incurred capital expenditures could add to the cause of financial hardship, such expenditures should not be viewed in isolation and would need to be considered in context with current and forecasted financial results.

48. The Monitor notes that no current internally prepared or audited financial statements were provided as part of the Ridley Application Materials and, therefore, the Monitor was unable to utilize current financial statements to assess Ridley's claim of significant financial hardship. Further, Ridley did not include any future financial projections within their materials to support the commentary about the potential loan defaults or pushing Ridley to the 'brink of insolvency.'
49. Based on the information available to the Monitor, it appears that the Ridley Terminal has a long history of operating without revenue or coal delivered from Coalspur. Ridley has been receiving coal from Coalspur for ~2 years of its over 35-year history. Although the Ridley Disclaimer will certainly cause a negative financial impact to Ridley due to loss of future revenue, the CCAA requires that the Court consider whether there is significant financial hardship.
50. Given the relatively short business relationship between Coalspur and Ridley and that the loss of coal deliveries from Coalspur would put Ridley back in line with historical export volumes they operated at from 2017 to 2019 (excluding Coalspur's 6% share of production in 2019), it is the Monitor's view that the Ridley Disclaimer will not cause significant financial hardship to Ridley.

#### Overall conclusion on the Ridley Disclaimer

51. The Monitor has weighed the relative benefit of the Ridley Disclaimer enhancing the prospect of a viable compromise or arrangement against the relative hardship that will be suffered by Ridley based on the evidence filed and the information publicly available. The Monitor remains of the view that, on balance, the facts are in favour of the Monitor approving the Ridley Disclaimer and, accordingly, after reviewing the Ridley Application Materials the Monitor continues to support the approval of the Ridley Disclaimer.

## **CRITICAL SUPPLIER CHARGE**

52. Coalspur's application for a declaration that Trafigura is a critical supplier and for a critical supplier charge in favour of Trafigura is pursuant to Section 11.4 of the CCAA. In the Monitor's view, Trafigura meets the criteria under Section 11.4(1) noting that they are a supplier of services to the Company (sale of coal to third parties), which are critical to the Company's continued operation (Coalspur has limited options to sell their coal by any other means).
53. A critical supplier declaration would require Trafigura to provide services to the Company on the terms and conditions consistent with the fourth letter agreement referenced in the Affidavit of Michael Beyer sworn June 28, 2021 or as the Court considers appropriate. The critical supplier charge sought by Coalspur shall declare that the assets and property of Coalspur are subject to a charge in favor of Trafigura in the aggregate amount of C\$17 million.
54. The Monitor is supportive of Coalspur's application for a critical supplier charge for Trafigura for the following reasons:
- a. Cline Trust Company LLC, as interim financing lender and second secured creditor, is supportive of the request; and
  - b. Trafigura is a critical supplier for the successful, ongoing operations of the Company, without whom Coalspur would be extremely burdened to market and realize on their coal production.

## **STAY EXTENSION**

55. Coalspur is requesting an order extending the stay of proceedings to September 3, 2021. The Monitor's provides the following comments with respect to Coalspur's application for the extension of the Stay of Proceedings:

- a. the Second Cash Flow Statement for the 13 weeks ending September 3, 2021 demonstrates that Coalspur will have sufficient liquidity to fund its obligations and the costs of these CCAA Proceedings during the term of the proposed extension of the Stay of Proceedings;
- b. it will allow Coalspur time to pursue a restructuring strategy which may include a sales and investment solicitation process or a plan of arrangement;
- c. there will be no material prejudice to Coalspur's creditors and other stakeholders as a result of the extension of the Stay of Proceedings;
- d. in the Monitor's view, Coalspur is acting in good faith and with due diligence;
- e. Coalspur's overall prospects of effecting a viable restructuring will be enhanced by the extension of the Stay of Proceedings; and
- f. the length of the proposed Stay of Proceedings, approximately two months, is reasonable given the complexity and nature of Coalspur's business and the number of stakeholder groups that the Company will be consulting with while formulating their restructuring plan.

#### **RESTRICTED COURT ACCESS ORDER**

56. The Supplemental Report has been prepared in conjunction with this Third Report and contains highly confidential, commercially sensitive information of Coalspur and certain third parties, which could materially harm the interest of both Coalspur and the third parties disclosed therein.

57. A restricted court access order is necessary to prevent the confidential and commercially sensitive information contained in the Supplemental Report from being published and disclosed. The restricted court access order sought is the least restrictive means possible to prevent disclosure of the confidential and commercially sensitive information in the Supplemental Report.

## CONCLUSIONS AND RECOMMENDATION


58. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant the following:

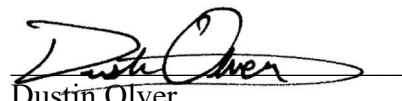
- a. an Order allowing the Ridley Disclaimer and declaring Ridley has a provable claim in these CCAA Proceedings with respect to any loss in relation to the Ridley Disclaimer;
- b. a critical supplier charge in favour of Trafigura;
- c. a restricted court access order to seal the confidential Supplemental Report; and
- d. the extension to the Stay of Proceedings.

\*\*\*\*\*

All of which is respectfully submitted this 28<sup>th</sup> day of June 2021.

FTI Consulting Canada Inc.  
In its capacity as Monitor of the Company

  
Deryck Helkaa  
Senior Managing Director

  
Dustin Oliver  
Senior Managing Director

# APPENDIX “A”

Ridley Disclaimer

COURT FILE NUMBER 2101-05019

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

**AND IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF COALSPUR MINES (OPERATIONS)  
LTD.**

DOCUMENT **NOTICE BY DEBTOR COMPANY TO DISCLAIM OR  
RESILIAE AN AGREEMENT (FORM 4)**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**Osler, Hoskin & Harcourt LLP**  
Barristers & Solicitors  
Brookfield Place, Suite 2700  
225 6 Ave SW  
Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Emily Paplawski  
Telephone: (403) 260-7000  
Facsimile: (403) 260-7024  
Email: [RVandemosselaer@osler.com](mailto:RVandemosselaer@osler.com) / [EPaplawski@osler.com](mailto:EPaplawski@osler.com)  
File Number: 1217428

**To: FTI Consulting Canada Inc. in its capacity as Court-appointed Monitor of Coalspur  
Mines (Operations) Ltd. (the "Monitor")**

**And**



**to: Ridley Terminals Inc.**

1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of Coalspur Mines (Operations) Ltd. ("Coalspur") were commenced on the 26th day of April, 2021 (the "CCAA Proceedings").
2. In accordance with s. 32(1) of the Act, Coalspur hereby gives you notice of its intention to disclaim or resiliate the following agreements:
  - a. A January 1, 2018 Terminal Services Agreement between Ridley Terminals Inc. and Coalspur Mines (Operations) Ltd., a copy of which is attached hereto as Schedule "A";
  - b. A July 1, 2020 Settlement Agreement and Mutual Release between Ridley Terminals Inc. and Coalspur Mines (Operations) Ltd., a copy of which is attached hereto as Schedule "B";
  - c. A February 13, 2021 Letter Agreement between Ridley Terminals Inc. and Coalspur Mines (Operations) Ltd., a copy of which is attached hereto as Schedule "C";

(collectively, the "Agreement").
3. In accordance with s. 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the Agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with para. 32(5) of the Act, if no application for an order is made in accordance with s. 32(2) of the Act, the Agreement is disclaimed or resiliated on the 6<sup>th</sup> of June, 2021, being 30 days after the day on which this notice has been given.

Dated at the City of Calgary in the Province of Alberta this 7<sup>th</sup> day of May, 2021.

COALSPUR MINES  
(OPERATIONS) LTD.

Per :   
Name: Michael Beyer

The Monitor approves the proposed disclaimer or resiliation.

Dated at the City of Calgary in the Province of Alberta this 7<sup>th</sup> day of May, 2021.

FTI Consulting Canada Inc. in its capacity as  
Court-appointed Monitor of Coalspur Mines  
(Operations) Ltd.

Per : 

Name: Deryck Helkaa

Title: Senior Managing Director

# APPENDIX “B”

May 16, 2021 "Reasons for Disclaimer"  
Letter from Coalspur to Ridley



Calgary

May 16, 2021

Randal Van de Mosselaer  
Direct Dial: 403.260.7060  
rvandemosselaer@osler.com  
Our Matter Number: 1217428

Toronto

Montréal

**SENT BY ELECTRONIC MAIL ([GRUBERD@BENNETTJONES.COM](mailto:GRUBERD@BENNETTJONES.COM))**

Ottawa

Bennett Jones LLP  
2500 Park Place  
666 Burrard Street  
Vancouver BC V6C 2X8

Vancouver

New York

Attention: David Gruber

Dear Sir:

**Re: *In the matter of Coalspur Mines (Operations) Ltd.*  
*Alberta Court of Queen’s Bench File No. 2101-05019 (the “CCAA Action”)***

As you know, we are counsel to Coalspur Mines (Operations) Ltd. (“**Coalspur**”) in connection with the above noted proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (“**CCAA**”). A copy of the Amended and Restated Initial Order granted by the Honourable Madam Justice Shelley on May 6, 2021 and other public information related to Coalspur’s CCAA Action can be found on the website of the Court-appointed Monitor at: <http://cfcanada.fticonsulting.com/coalspur/>.

We write in response to the request made in your letter of May 10, 2021 for written reasons pursuant to section 32(8) of the CCAA for Coalspur’s disclaimer or resiliation of the following agreements:

- a. Terminal Services Agreement between Ridley Terminals Inc. (“**Ridley**”) and Coalspur, dated January 1, 2018;
- b. Settlement Agreement and Mutual Release between Ridley and Coalspur, dated July 1, 2020; and
- c. Letter Agreement between Ridley and Coalspur, dated February 13, 2021; (collectively, the “**Ridley Agreement**”).

Below are the requested reasons.

Given the nature of Coalspur’s business, including fluctuating global coal prices, significant fixed operating costs, and the early stages of operations at the Vista Coal Mine Project, including as a result of the Permit Issue and Trafigura’s enforcement of its security (all as described in the Affidavit of Michael Beyer sworn on April 19, 2021 in the CCAA

Action) Coalspur must continue to carefully manage its cash flows and liquidity position during its CCAA proceedings.

Since commencement of the CCAA Action, Coalspur has, in consultation with the Monitor, undertaken a review of its current suite of contractual obligations with a view to identifying potential cost reductions, improve its liquidity position and facilitate a successful restructuring of its business.

In connection with this review, Coalspur has determined that the Ridley Agreement is no longer economical to Coalspur and is financially burdensome. Coalspur believes that disclaimer of the Ridley Agreement will enhance the prospects of a viable compromise or arrangement being made by Coalspur by saving Coalspur more than USD \$86 million over the remaining term of the Ridley Agreement, of which approximately USD \$13 million is expected to be realized in 2021 alone. In addition, Coalspur estimates that there will be additional indirect savings of at least USD \$23 million over the remaining term of the Ridley Agreement as a result of its disclaimer.

In addition to the foregoing cost savings, the Ridley Agreement includes burdensome minimum volume commitments which permit little flexibility to Coalspur in the event the Vista Coal Mine Project experiences an operational issue/outage which results in projected production targets not being met. Coalspur expects that disclaimer of the Ridley Agreement will minimize its financial risk in the event of future operational issues at the Vista Coal Mine Project.

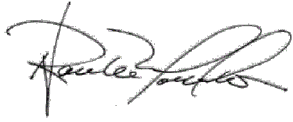
As a result, Coalspur expects that disclaimer of the Ridley Agreement will significantly improve its liquidity and assist with achieving a meaningful restructuring.

Disclaimer of the Ridley Agreement is not expected to negatively impact Coalspur's operations.

Coalspur believes that it must reduce its operating costs and improve its liquidity in order to be sustainable in the long term and better positioned to adapt to fluctuating market conditions.

Accordingly, Coalspur, with the support of the Monitor, has determined that the Ridley Agreement should be disclaimed by way of CCAA disclaimer.

Yours truly,

A handwritten signature in black ink, appearing to read "Randal Van de Mosselaer". The signature is fluid and cursive, with the first name being the most prominent.

Randal Van de Mosselaer  
RSV:ep

cc: *Client*  
*Emily Paplawski, Osler*  
*Kelly Bourassa, James Reid, Blakes*  
*Deryck Helkaa, Dustin Olver, FTI Consulting*  
*Karen Fellowes, Stikeman Elliott LLP*  
*Gunnar Benediktsson, Norton Rose Fulbright LLP*