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Market Announcements
Australian Securities Exchange
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Bathurst Resources Limited (ASX:BRL) – High Court judgment released in LMCH litigation

Bathurst Resources Limited (“BRL”) advises that it has received an unfavourable judgment from the High Court of New Zealand in civil proceedings brought against it by L&M Coal Holdings Limited (“LMCH”) – refer *L&M Coal Holdings Limited v Bathurst Resources Limited & Anor* [2018] NZHC 2127.

On 23 December 2016, BRL made a market announcement that LMCH had commenced a civil claim against it. The litigation concerns BRL’s Escarpment mine site, which was placed on a regime of care and maintenance in May 2016 due to the depressed international market for coking coal. Disputes arose between the parties over the interpretation of the June 2010 agreement for sale and purchase of the rights to mine at Escarpment (the “ASP”), and subsequent contractual amendments. LMCH asserted that, from the point at which the Escarpment mine site was placed on care and maintenance, BRL was then required to make a “Performance Payment” of US\$40 million to it.

The intended mine under construction at Escarpment is an export coking coal mine. At no time has any coking coal from Escarpment been exported for sale. For this reason, BRL denied that the threshold for the US\$40 million “Performance Payment” had been reached. Further, BRL relied upon a subsequent amendment to the ASP, from August 2012, which provided that “*a failure by [BRL] to make, when and as due, a Performance Payment is not an actionable breach of or default under [the ASP] for so long as the relevant royalty payments continue to be made under the Royalty Deed*”. Advice on the effect of this amendment had been sought by BRL at the time of placing the Escarpment mine site on care and maintenance. Further, royalties have been (and continue to be) paid to LMCH on all thermal coal won during construction activity at Escarpment which has been sold into the domestic market. For this reason too, BRL denied that the “Performance Payment” was due to LMCH.

The High Court disagreed with BRL, and found in LMCH’s favour. It was held that the “Performance Payment” trigger had been reached, because more than 25,000 tonnes of coal had been transported from the Escarpment mine permit areas – irrespective of the type of coal, and whether it had been exported. Further, it was held that in order to be able to rely upon the suspensory effect of the August

2012 amendment to the ASP (as above), BRL's royalty payments to LMCH had to have been based upon a reasonable level of coal production (which was not defined in the judgment) at Escarpment. The Court was also prepared to imply a term into the ASP to this effect. Accordingly, an order has been made that BRL must pay the "Performance Payment" of US\$40 million to LMCH.

Naturally, BRL is extremely disappointed by the High Court's judgment. After considering the reasons given in the judgment and taking legal advice (including from senior counsel), it has resolved to appeal the High Court's decision to the Court of Appeal. The deadline for filing its notice of appeal is 14 September 2018, but BRL expects to have this next step in the litigation completed this week. Additionally, as is usual and also on advice, BRL may take interim steps in relation to the judgment pending the hearing of its appeal.

On behalf of Bathurst Resources Limited



Toko Kapea
Chairman