



This is the 1st Affidavit of
Tijana Gavric in this case and
was made on August 13, 2016

NO. S-1510120
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

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

AND

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

PETITIONERS

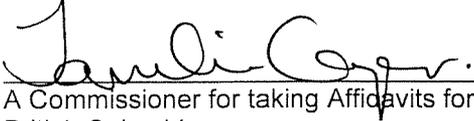
AFFIDAVIT

I, **TIJANA GAVRIC**, Barrister and Solicitor, of 2800 - 666 Burrard Street, Vancouver British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am an associate with DLA Piper (Canada) LLP, the BC counsel for the Petitioners herein, and as such have personal knowledge of the facts hereinafter deposed to, except where such facts are stated to be based upon information and belief and where so stated I do verily believe the same to be true.
2. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a true copy of a letter dated August 12, 2016 from Patrick Riesterer of Osler, Hoskin & Harcourt LLP, the Ontario counsel for the Petitioners herein, to John Sandrelli and Tevia Jeffries of Dentons Canada LLP regarding the Application Response dated August 11, 2016 filed by Mr. Sandrelli and Ms. Jeffries on behalf of United Mine Workers of America 1974 Pension Plan (the "**Application Response**").

3. Attached hereto and marked as **Exhibit "B"** to this my Affidavit is a true copy of a letter dated August 12, 2016 from Peter J. Reardon of McMillan LLP, counsel for the Monitor herein, to Mr. Sandrelli and Ms. Jeffries regarding the Application Response.

SWORN BEFORE ME at Vancouver, British Columbia, on this 13th day of August, 2016.


A Commissioner for taking Affidavits for British Columbia.

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TIJANA GAVRIC

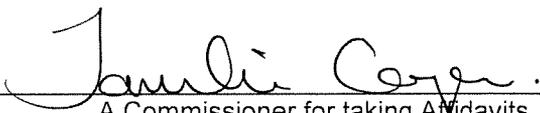
TAMLIN COOPER
Barrister and Solicitor
DLA Piper (Canada) LLP
666 Burrard Street, Suite 2800
Vancouver, BC V6C 2Z7
604.687.9444

SCHEDULE "A"

Petitioners

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

This is **Exhibit "A"** referred to in the affidavit of Tijana Gavric, sworn before me at Vancouver, British Columbia, this 13th day of August, 2016


A Commissioner for taking Affidavits
for British Columbia

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto

August 12, 2016

Patrick Riesterer
Direct Dial: 416.862.5947
PRiesterer@osler.com
Our Matter: 1164807

Montréal

Calgary

SENT BY EMAIL

Ottawa

Mr. John Sandrelli and Ms. Tevia Jeffries
Dentons Canada LLP
250 Howe Street
20th Floor
Vancouver, BC V6C 3R8

Vancouver

New York

Dear Mr. Sandrelli and Ms. Jeffries:

Walter Energy Canada Holdings, Inc.

We are writing in response to your Application Response dated August 11, 2016, and in particular the comments made therein regarding the Claims Process Order and regarding the sales process.

Claims Process

We disagree with the statements in the Application Response to the effect that (i) you have not been provided with the Walter Canada Group's and the Monitor's reasons for rejecting the claim of United Mine Workers of America 1974 Pension Plan ("**1974 Plan**"); and (ii) that you have proven a valid and enforceable claim under U.S. law.

We explained to you in our letter of July 20, 2016 that we reject the claim of the 1974 Plan on the following grounds:

- a) The United States statute titled Employee Retirement and Income Security Act of 1974 ("**ERISA**") was not intended to have and does not have extraterritorial effect. As such, you have not proven that your client has a valid claim under U.S. law.
- b) Even if ERISA was intended to have extra-territorial effect, we do not believe it is enforceable in Canada as a matter of Canadian law. As such, you have not proven that that your client has a valid claim under Canadian law.

A copy of our July 20, 2016 letter is enclosed. We refer you to the following statement contained in that letter:

We have analyzed ERISA and are of the view that, among other things, (1) ERISA was not intended to have and does not have extra-territorial effect, such that it could give rise to a claim against Walter Canada; and (2) a Canadian court should not impose liability on Walter Canada on the basis of ERISA even if that statute

purported to have extra-territorial effect. The Monitor and its Canadian and U.S. counsel have conducted their own independent review of the merits of the 1974 Plan claim and the Monitor shares Walter Canada's view.

On July 25, 2016, we advised you that in addition to the proof of the legal enforceability of ERISA, you should also demonstrate that the 1974 Plan documentation is enforceable against Walter Canada notwithstanding the fact that no Walter Canada entity is party to that documentation. We refer you to our letter of July 25, 2016.

Moreover, on August 11, 2016, we had a discussion regarding the materials that Walter Canada requires be served in respect of the claim of the 1974 Plan. We requested that you provide legal grounds for the extra-territorial enforceability of ERISA.

The above facts are known to you but not reflected in your Application Response. In light of the foregoing, paragraphs 8 through 11 of the "Part 4: Factual Basis" are overstated and incorrect. Paragraphs 11 through 20 of "Part 5: Legal Basis" and in particular the statements in paragraphs 15, 16 and 19 are also incorrect.

As discussed on the August 11 call and as we have previously indicated, the 1974 Plan has provided sufficient factual information to Walter Canada to prove that it has a valid and enforceable claim against the U.S. affiliates of Walter Energy, Inc. We are simply asking that the 1974 Plan meet the legal onus on it to prove that it has a claim by filing materials to demonstrate the legal basis for its claim against Walter Canada by the Claims Bar Date.

We are considering the proposal set out in your revised draft of the Claims Process Order and will provide you with comments in advance of the hearing. Any schedule for delivery of responding materials should provide sufficient time to allow all stakeholders an opportunity to respond to the 1974 Plan Claim.

Walter Canada reserves all rights with respect to its response to any materials put forward to prove the 1974 Plan claim.

Sales Process Disclosure

We and the Monitor have provided you with significant information regarding the sales process and the liquidation alternative that were conducted in respect of the assets of Walter Canada. We have provided you with summaries of the going concern bids and the liquidation bids and we and the Monitor have discussed our views of those bids with you.

The Monitor has also discussed the contents of its Confidential Supplemental Report with you, including the final cash position under both a going concern and a liquidation scenario, and has provided you with further written materials in respect of these matters. We

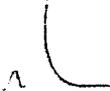
understand the Monitor has or will provide you with the additional schedules that you requested.

We once again confirm that there are no significant differences between the information about the going concern bids and the liquidation bids (including pricing) provided to you and the information about those matters contained in the Confidential SISP Materials. The Confidential SISP Materials are commercially sensitive, include personal information, and would not ordinarily be provided to stakeholders in a CCAA proceeding, even where such stakeholders are subject to NDAs. We do not intend to make these materials available to any persons especially those that we do not view as stakeholders in these proceedings.

You have been given all the relevant information and confirmation that the information you have is not materially different than the information in the Confidential SISP Materials. The CRO and Monitor are court officers and would not make statements that are false. These continued motions are a waste of estate resources. This needs to stop so we can move forward to close a going concern deal which, in our view, is a great success given current market conditions.

We are available to discuss these matters should you have any questions.

Yours very truly,



Patrick Riesterer
Associate

encl.

PR:krs

c: William E. Aziz, CRO, *Walter Canada*
Philip Reynolds & Anthony Tillman, *KPMG Inc.*
Wael Rostom & Peter Reardon, *McMillan LLP*
Marc Wasserman, *Osler, Hoskin & Harcourt, LLP*
Mary Buttery, *DLA Piper (Canada) LLP*

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OSLER

Toronto

July 20, 2016

Patrick Riesterer
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Our Matter: 1164807

Montréal

Calgary

SENT BY EMAIL

Ottawa

Private & Confidential

Vancouver

Mr. John Sandrelli and Ms. Tevia Jeffries
Dentons Canada LLP
250 Howe Street
20th Floor
Vancouver, BC V6C 3R8

New York

Dear Mr. Sandrelli and Ms. Jeffries:

Walter Energy Canada Holdings, Inc.

Thank you for your letters of July 15, 2016 and July 19, 2016. We have reviewed all of the materials that you provided to us in respect of the claim of the United Mine Workers of America 1974 Pension Plan (the "**1974 Plan**") made against Walter Energy Canada Holdings, Inc. and its Canadian affiliates (collectively, "**Walter Canada**").

We understand that the claim of the 1974 Plan against Walter Canada is solely based on the provisions of the United States statute titled Employee Retirement and Income Security Act of 1974 ("**ERISA**"), and in particular those provisions of ERISA that impose joint and several liability on legal entities that are within the same 'controlled group' as the contributing employer to a multiemployer pension plan such as the 1974 Plan. Absent the provisions of ERISA, we understand that the pension plan document titled United Mine Workers of America 1974 Pension Plan, effective December 6, 1974, and the related collective bargaining agreements would not give rise to a claim against Walter Canada. You have not provided us with any indication of other grounds on which the 1974 Plan claim is based.

We have analyzed ERISA and are of the view that, among other things, (1) ERISA was not intended to have and does not have extra-territorial effect, such that it could give rise to a claim against Walter Canada; and (2) a Canadian court should not impose liability on Walter Canada on the basis of ERISA even if that statute purported to have extra-territorial effect. The Monitor and its Canadian and U.S. counsel have conducted their own independent review of the merits of the 1974 Plan claim and the Monitor shares Walter Canada's view.

As such, Walter Canada will reject the claim of the 1974 Plan in the claims process that it will conduct pursuant to these *Companies' Creditors Arrangement Act* proceedings. The

1974 Plan will be provided with an opportunity to dispute Walter Canada's rejection of its claim by filing materials with the Supreme Court of British Columbia at the appropriate time. A hearing to assess the merits of the 1974 Plan claim will follow thereafter.

In light of Walter Canada's conclusion regarding the 1974 Plan claim, no further information will be provided to the 1974 Plan advisors in respect of the sales process being conducted by Walter Canada or of the parallel liquidation process being conducted in respect of its assets other than such information as is provided to all persons making claims against Walter Canada.

Notwithstanding the foregoing, we are prepared to consider any further or other materials you may have that would demonstrate that the 1974 Plan claim is enforceable against Walter Canada, including in respect of whether ERISA is effective in Canada.

Further, if the Court were to determine that the 1974 Plan claim is enforceable in Canada, Walter Canada reserves all rights with respect to the 1974 Plan claim, including, without limitation, the right to request further information in respect thereof and to dispute the calculation of the quantum of the 1974 Plan claim contained in any materials provided to us and the Monitor.

We are available to discuss these matters should you have any questions.

Yours very truly,

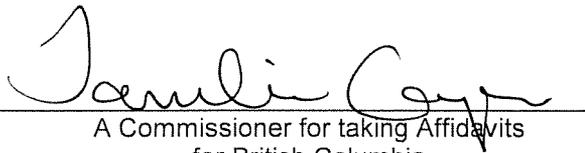
Handwritten signature of Patrick Riesterer in cursive script, with initials 'PR' below the name.

Patrick Riesterer
Associate

PR:krs

c: William E. Aziz, CRO, *Walter Canada*
Philip Reynolds & Anthony Tillman, *KPMG Inc.*
Wael Rostom & Peter Reardon, *McMillan LLP*
Marc Wasserman, *Osler, Hoskin & Harcourt, LLP*
Mary Buttery, *DLA Piper (Canada) LLP*

This is **Exhibit "B"** referred to in the affidavit of Tijana Gavric, sworn before me at Vancouver, British Columbia, this 13th day of August, 2016

A handwritten signature in cursive script, appearing to read "Janine Coyne", written over a horizontal line.

A Commissioner for taking Affidavits
for British Columbia



Reply to the Attention of	Peter J. Reardon
Direct Line	604.691.7460
Direct Fax	604.893.2377
Email Address	peter.reardon@mcmillan.ca
Our File No.	236073
Date	August 12, 2016

VIA EMAIL

Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

Attention: John Sandrelli and Tevia Jeffries

Dear Sirs/Mesdames:

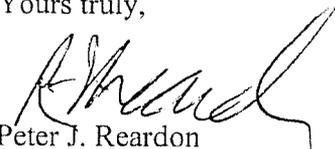
**Re: In the Matter of Walter Energy Canada Holdings, Inc.
and Other Petitioners
SCBC Action No. S-1510120, Vancouver Registry**

We have reviewed with our client the Application Response you filed on behalf of the 1974 Plan on August 11, 2016.

It is the Monitor's view that the information you have been provided is more than adequate for the 1974 Plan and its Advisors to evaluate the Proposed Transaction. You have been given the economic details of the Proposed Transaction and a summary of the liquidation proposals obtained by the Company and the Monitor. You have also been provided with a summary of all of the information contained in the Monitor's Confidential Report. Today you were given copies of Schedules "D" and "E" to the Monitor's Confidential Report. The Monitor and its counsel have responded to your specific requests, and have walked you through the Monitor's analysis of the Proposed Transaction and the liquidation proposals. All of that information is more than sufficient for the 1974 Plan and its Advisors to determine, as the Monitor has, that the Proposed Transaction is superior to any other proposals, including the liquidation proposals, in the amount that will be recovered by the Estate and available for distribution to creditors as well as for the other reasons set out in the Monitor's Fourth Report.

The Monitor will, of course, continue with the dialogue that has been ongoing with the 1974 Plan and its Advisors following the Petitioners' Application on August 15, 2016.

Yours truly,



Peter J. Reardon

PJR/lav
Encls.

cc: Patrick Riesterer, Osler, Hoskin & Harcourt, LLP
Marc Wasserman, Osler, Hoskin & Harcourt, LLP
Philip Reynolds & Anthony Tillman, KPMG Inc.
Wael Rostom, McMillan LLP
Mary BATTERY, DLA Piper (Canada) LLP

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

PETITIONERS

AFFIDAVIT #1 OF TIJANA GAVRIC

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Client Matter No. 15375-00001

TAG/sxl