

NO. S-1510120
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

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

AND

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

PETITIONERS

WALTER CANADA GROUP'S BOOK OF EVIDENCE
(Volume IA)

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IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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LISTED IN SCHEDULE "A" TO THE INITIAL ORDER

PETITIONERS

WALTER CANADA GROUP'S BOOK OF EVIDENCE

(REVISED)

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PETITIONERS

NOTICE OF APPLICATION

Names of applicants: Walter Energy Canada Holdings, Inc. and the other Petitioners listed on
Schedule "A" (collectively with the partnerships listed on Schedule "A"
hereto, the "**Walter Canada Group**")

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

TAKE NOTICE that an application will be made by the Walter Canada Group to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on **January 9, 2017** at 10:00 a.m. for the order set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. Under the Canadian conflict of laws rules, the claim of the United Mine Workers of America 1974 Pension Plan and Trust (the "**1974 Plan**") against the Walter Canada Group is governed by Canadian substantive law.
2. In the alternative, if the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including The Employee Retirement Income Security Act of 1974 (ERISA) (Pub.L. 93-406, 88 Stat. 829, enacted September 2, 1974, codified in part at 29 U.S.C. ch. 18 ("**ERISA**")), as a matter of United States law controlled group liability for withdrawal liability related to a multi-employer pension plan under ERISA does not extend extraterritorially.
3. In the further alternative, if the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA), and ERISA applies extraterritorially, that law is unenforceable by Canadian courts as a penal, revenue or other public law of the United States.
4. In the further alternative, if the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA) and ERISA applies extraterritorially, that law is unenforceable by Canadian courts because it conflicts with Canadian public policies.

Part 2: FACTUAL BASIS

1. This Notice of Application is delivered in accordance with the case plan order made in these proceedings and awaiting entry (the "Case Plan Order"), which also governs the timelines for *inter alia*, responses.

Introduction

2. On December 7, 2015 the Walter Canada Group were granted protection pursuant to section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), which proceedings have been extended from time to time (the "CCAA Proceedings").
3. As part of the CCAA Proceedings, and pursuant to a Claims Process Order pronounced herein on August 16, 2016, the 1974 Plan delivered to the Service List a Notice of Civil Claim seeking allowance of its claim in the amount of US\$904,367,132.
4. On September 23, 2016 the Walter Canada Group filed a Response to Civil Claim, opposing relief sought by the 1974 Plan.
5. On September 26, 2016 the USW filed a Response to Civil Claim, opposing relief sought by the 1974 Plan, and asserting that if the 1974 Plan Claim was to be allowed, that it be in a separate class from the USW Employee Claimants, and would only receive a distribution after the claims of the USW Employee Claimants were paid in full.
6. On September 26, 2016, the Monitor filed a Response to Civil Claim, stating that it was taking no position with respect to the adjudication of the 1974 Plan Claim, instead offering any assistance to the Court that the Court may require.
7. On October 5, 2016 the 1974 Plan filed a Reply to the Response to Civil Claim of the USW.
8. On November 9, 2016 the 1974 Plan delivered to the Service List an Amended Notice of Civil Claim, alleging additional facts in support of its claim.
9. On November 10, 2016 the Walter Canada Group delivered to the Service List an Amended Response to Civil Claim. The facts set out herein are in addition to those set out in the Walter Canada Group's Amended Response to Civil Claim.
10. On November 11, 2016 the USW delivered to the Service List an Amended Response to Civil Claim.
11. The Petitioners state it is appropriate that certain preliminary issues be determined by way of summary proceeding.

The issues that can be determined in a summary fashion are as follows:

- a. Under Canadian conflict of laws rules, is the 1974 Plan's claim against the Walter Canada Group governed by Canadian substantive law or United States substantive law (including ERISA)?
- b. If the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA), as a matter of United States law does controlled group liability for withdrawal liability related to a multi-employer pension plan under ERISA extend extraterritorially?
- c. If the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA), and ERISA applies extraterritorially, is that law

unenforceable by Canadian courts as a penal, revenue or other public law of the United States?

- d. If the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA) and ERISA applies extraterritorially, is that law unenforceable by Canadian courts because it conflicts with Canadian public policy?

Part 3: LEGAL BASIS

1. The Walter Canada Group relies on the legal basis set out in Walter Canada Group's Amended Response to Civil Claim as will be fully articulated in the written argument to be delivered pursuant to the terms of the Case Plan Order.
2. Under the Canadian conflict of laws rules, the claim of the 1974 Plan against the Walter Canada Group is governed by Canadian substantive law.
3. In the alternative, if the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA), as a matter of United States law controlled group liability for withdrawal liability related to a multi-employer pension plan under ERISA does not extend extraterritorially.
4. In the further alternative, if the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA), and ERISA applies extraterritorially, that law is unenforceable by Canadian courts as a penal, revenue or other public law of the United States.
5. In the further alternative, if the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA) and ERISA applies extraterritorially, that law is unenforceable by Canadian courts because it conflicts with Canadian public policies.
6. The Walter Canada Group further relies upon:
 - (a) *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
 - (b) *Supreme Court Civil Rules*, B.C. Reg. 241/2010, as amended;
 - (c) the inherent and equitable jurisdiction of this Honourable Court; and
 - (d) such further and other grounds as counsel may advise and this Honourable Court may deem just.

Part 4: MATERIAL TO BE RELIED ON

1. Walter Canada Group's Book of Evidence to be delivered in accordance with the Case Plan Order, including the Expert Report to be delivered in accordance with the Case Plan Order;
2. pleadings and other materials filed herein; and
3. such further and other materials as counsel may advise and this Honourable Court may permit.

The applicants estimate that the application will take 5 days.

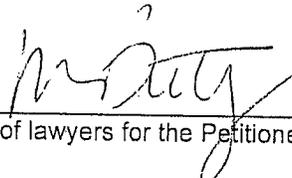
This matter is within the jurisdiction of a master.

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 in consultation with Madam Justice Fitzpatrick and 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 after 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).

November 14, 2016
Dated _____



Signature of lawyers for the Petitioners

DLA Piper (Canada) LLP
(Mary I.A. Buttery/Lance Williams)
and
Osler, Hoskin & Harcourt LLP
(Mary Paterson/Marc Wasserman/Patrick Riesterer)

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of Judge Master

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.

Partnerships

1. Walter Canadian Coal Partnership
2. Wolverine Coal Partnership
3. Brule Coal Partnership
4. Willow Creek Coal Partnership

SCHEDULE "B"

SERVICE LIST

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NO. S-1510120
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IN THE MATTER OF THE PLAN OF COMPROMISE AND
ARRANGEMENT OF WALTER ENERGY CANADA HOLDINGS, INC.,
AND THE OTHER PETITIONERS LISTED ON SCHEDULE "A"

PETITIONERS

NOTICE OF APPLICATION

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Tel. No. 604.687.9444
Fax No. 604.687.1612

File No. 15375-00001

MUB/



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PETITIONERS

Application Response of the Respondent Steelworkers

APPLICATION RESPONSE OF: United Steelworkers, Local 1-424 (the "Application Respondent")

TO: The Service List

THIS IS A RESPONSE TO: the Notice of Application of Walter Energy Holdings Inc et al, (the Walter Canada Group) Applicants (Petitioners) filed November 16, 2016.

Part 1: ORDERS CONSENTED TO

1. The following paragraphs in the Applicants' Notice of Application: 1, 2, 3, and 4.

Part 2: ORDERS OPPOSED

2. The following paragraphs in the Applicants' Notice of Application: None.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

3. The following paragraphs in the Applicants' Notice of Application: None.

Part 4: FACTUAL BASIS

1. The Respondent Steelworkers relies on the facts set out in the Applicants' Statement of Uncontested Facts dated November 14, 2016 filed in support of this Application.
2. If this Application is not allowed, the Respondent Steelworkers will adduce further evidence to address those remaining issues raised in the Notice of Civil Claim and Responses filed in this matter, but not which are not addressed in the scope of the Application.
3. This evidence includes facts relating to the control of Walter Canada Group's mining operations, labour relations, and collective bargaining process and agreements.

Part 5: LEGAL BASIS

1. Under the Canadian conflict of laws rules, the 1974 Plan's Claim is governed by Canadian substantive law which does not recognize the 1974 Plan's Claim for the purposes of *CCAA* proceedings in this Court.
2. In the alternative, if the 1974 Plan's Claim is governed by United States substantive law (including *ERISA*), as a matter of United States law controlled group liability for withdrawal liability related to a multi-employer pension plan under *ERISA* does not extend extraterritorially to Canada.

3. In the further alternative, if the 1974 Plan's Claim is governed by United States substantive law (including *ERISA*), and *ERISA* applies extraterritorially, that law is unenforceable by this Court as a penal, revenue or other public law of the United States.

4. In the further alternative, if the 1974 Plan's Claim is governed by United States substantive law (including *ERISA*) and *ERISA* applies extraterritorially, that law is unenforceable by this Court because it conflicts with Canadian public policies.

5. If this Application is not allowed, the Respondent Steelworkers will raise further legal arguments to address those remaining issues raised in the Respondent Steelworkers' Response to the Notice of Civil Claim filed in this matter, but not which are not addressed in the scope of the Application.

6. These legal issues include

- a) the reasonableness and equity of the *CCAA* distribution plan if the 1974 Plan's Claim is allowed;
- b) the appropriateness of different classes and priorities of claims for the *CCAA* distribution process in this matter; and
- c) the status of the Respondent Steelworkers Claim arising under a constitutionally protected collective bargaining process and the application of section 2(d) of the *Charter of Rights and Freedoms* values.

Part 6: MATERIAL TO BE RELIED UPON

The Respondent Steelworkers will rely upon:

- (i) The pleadings and affidavit and supporting materials filed in the CCAA proceedings in this matter to date;
- (ii) The Applicant Walter Canada Group's Book of Evidence filed in support of this Application; and
- (iii) Materials produced by the Applicant or other Respondents in support of this Application including expert reports.

The Application Respondent estimates that the application will take: 5 days.

The Application Respondent has filed in this proceeding a document that contains the application respondent's address for service. The Application Respondent's ADDRESS FOR SERVICE is:

Victory Square Law Office LLP
Attn: Craig D. Bavis
710 - 777 Hornby Street
Vancouver, BC V6Z 1S4
P: 604-684-8421/F: 604-684-8427
email: cbavis@vslo.bc.ca

Date: November 23, 2016



Craig D. Bavis
Counsel for the Application Respondent



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

APPLICATION RESPONSE

Application response of: United Mine Workers of America 1974 Pension Plan and Trust
(the "application respondent" or "1974 Plan").

THIS IS A RESPONSE TO the Notice of Application of the Petitioners filed the 14th day of
November, 2016 (the "Notice of Application").

Part 1: ORDER CONSENTED TO

The application respondent consents to the granting of the orders set out in the following
paragraphs of Part 1 of the Notice of Application on the following terms: none.

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in the following
paragraphs of Part 1 of the Notice of Application: all.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of the order set out in Part 1 of the
Notice of Application on the following terms: none.

Part 4: FACTUAL BASIS

1. This Application Response is delivered in accordance with the case plan order made in these proceedings and entered November 14, 2016 (the "**Case Plan Order**").

The 1974 Plan Claim

2. The 1974 Plan relies on the facts set out in the 1974 Plan's Amended Notice of Civil Claim filed November 9, 2016 (the "**Amended Notice of Civil Claim**"). Capitalized terms used but not defined herein have the meaning ascribed to them in the Amended Notice of Civil Claim.
3. The 1974 Plan Claim against the Petitioners arises under ERISA, as well as the United Mine Workers of America 1974 Pension Plan Document and United Mine Workers of America 1974 Pension Trust Documents, each effective December 6, 1974, and amended from time to time thereafter, and the CBA (as defined in the Amended Notice of Civil Claim).
4. The 1974 Plan alleges that pursuant thereto, each of the Petitioners, along with its U.S. affiliates, is jointly and severally liable to the 1974 Plan for the claimed pension withdrawal liability of Jim Walter Resources Inc. ("**Walter Resources**"), one of the Petitioners' U.S. affiliates.
5. The 1974 Plan alleges that the 1974 Plan Claim is a valid and enforceable debt as against Walter Resources, and each foreign affiliate which meets the test under ERISA for a member of the same "controlled group" (i.e., each entity that is at least 80% owned, either directly or indirectly, by Walter Energy), which includes the Petitioners.

Summary Trial Application

6. On December 7, 2015, the Petitioners were granted protection pursuant to section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), which proceedings have been extended from time to time (the "**CCAA Proceedings**").
7. Pursuant to a Claims Process Order pronounced herein on August 16, 2016, the 1974 Plan delivered to the Service List a Notice of Civil Claim seeking allowance of its claim in the amount of US\$904,367,132.
8. On September 23, 2016, the Petitioners filed a Response to Civil Claim, opposing the relief sought by the 1974 Plan.

9. On September 26, 2016, the United Steelworkers, Local 1-424 (the "USW"), filed a Response to Civil Claim, among other things opposing relief sought by the 1974 Plan.
10. On September 26, 2016, the Monitor filed a Response to Civil Claim, stating that it was taking no position with respect to the adjudication of the 1974 Plan Claim.
11. On October 5, 2016 the 1974 Plan filed a Reply to the Response to Civil Claim of the USW.
12. On October 26, 2016, the parties appeared before the Court to seek direction regarding adjudication of the 1974 Plan Claim.
13. On November 9, 2016 the 1974 Plan delivered to the Service List an Amended Notice of Civil Claim, alleging additional facts in support of its claim.
14. On November 10, 2016 the Petitioners delivered to the Service List an Amended Response to Civil Claim.
15. On November 11, 2016 the USW delivered to the Service List an Amended Response to Civil Claim.
16. On November 14, 2016, the Petitioners delivered to the Service List a Notice of Application for summary trial pursuant to Supreme Court Civil Rule 9-7(2).
17. The Amended Responses to Civil Claim filed by the Petitioners and by the United Steelworkers Union (the "USW") in these proceedings (a) deny many of the facts set forth in the Amended Notice of Civil Claim; and (b) state that other facts are outside the knowledge of the Petitioners or the USW.
18. These disputed facts are relevant to this Court's assessment of the preliminary issues raised by the Petitioners in the Notice of Application, including whether the 1974 Plan Claim is properly governed by the substantive law of Canada or the United States.
19. On November 14, 2016, the Petitioners filed a book of evidence in six volumes, which contained an expert report of Marc Abrams (the "**Abrams Report**").
20. The Abrams Report identifies certain facts that militate in favour of and against the conclusions set forth therein.
21. These facts are among those disputed by the Petitioners and the USW or identified as outside their knowledge.

22. Certain of the disputed facts are within the knowledge of the Petitioners and, as a result, the factual dispute could potentially be resolved by way of targeted discovery.
23. On November 22, 2016, the 1974 Plan requested that the Petitioners review the documents in their possession and disclose documents related to targeted discovery categories itemized by the 1974 Plan.
24. On November 23, 2016, the 1974 Plan filed an application seeking an order for limited and targeted document discovery to allow it to meet the preliminary issues raised by the Petitioners' summary trial application.
25. The 1974 Plan also has asked to examine for discovery Mr. William G. Harvey, the former Executive Vice President and Chief Financial Officer of Walter Energy Canada Holdings.

Part 5: LEGAL BASIS

Suitability

1. The 1974 Plan supports adjudication of its claim at the earliest possible date that can accommodate limited and necessary pre-trial discovery.
2. This matter is not currently suitable for determination by way of summary trial. The preliminary issues raised in the Petitioners' Notice of Application go beyond what the Petitioners submitted at the court hearing on October 26, 2016 would be before the Court on a summary trial application.
3. Absent document discovery and examination for discovery, the 1974 Plan will be unable to meet the Petitioners' summary trial application and the Court will be unable to find the facts necessary to adjudicate the preliminary issues raised by the application.
4. For example, the parties are in disagreement as to the degree of integration of the Canadian and US arms of the Walter Energy Group's business. The 1974 Plan says that the level of integration is relevant to determine the proper law of the obligation of the Petitioners to the 1974 Plan. Facts that go to show the level of integration of the business are in the possession of the Petitioners. The Petitioners have led some evidence with respect to same. The 1974 Plan's ability to challenge the Petitioners' position and lead its own evidence in response is dependent on pre-trial discovery.
5. The Case Plan Order contemplates delivery of a stand-alone application pursuant to Supreme Court Civil Rule 9-7(11) in respect of whether the issues raised in the Petitioners' Notice of Application are suitable for summary trial.

Merits

6. In the alternative, the 1974 Plan relies on the legal basis set out in the Amended Notice of Civil Claim, as will be set out in the 1974 Plan's written argument to be delivered pursuant to the Case Plan Order.
7. In all of the circumstances, United States law, and in particular the law in effect in the District of Columbia and the State of Alabama, has the closest and most real connection to the 1974 Plan Claim.
8. Pursuant to the law that has the closest and most real connection, ERISA governs the 1974 Plan Claim.
9. Pursuant to ERISA, the 1974 Plan Claim is enforceable jointly and severally against each of the Petitioners that are at least 80% owned indirectly by Walter Energy Inc., notwithstanding that the Petitioners are located in Canada.
10. ERISA is not a penal, revenue or other public law of the United States.
11. ERISA does not conflict with Canadian public policy.
12. The Walter Canada Group further relies upon:
 - (a) *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
 - (b) *Supreme Court Civil Rules*, B.C. Reg. 241/2010, as amended;
 - (c) the inherent and equitable jurisdiction of this Honourable Court; and
 - (d) such further and other grounds as counsel may advise and this Honourable Court may deem just.

Part 6: MATERIAL TO BE RELIED ON

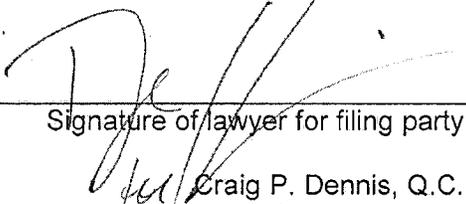
1. First Affidavit of Miriam Dominguez dated January 4, 2016;
2. Second Affidavit of Miriam Dominguez dated March 29, 2016;
3. First Affidavit of Dale Stover, sworn November 22, 2016;
4. Fourth Affidavit of Miriam Dominguez dated November 24, 2016
5. Expert Report of Judith Mazo, dated November 24, 2016;
6. An Agreed Statement of Facts, to be completed;

7. Answers on question of William Harvey (examination to be conducted in December 2016); and
8. Such other and additional material as counsel may advise and the Court may admit.

The application respondent does not offer a time estimate for the application.

- The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

Date: 24/November/2016



Signature of lawyer for filing party

Craig P. Dennis, Q.C.
Canadian counsel for United Mine Workers
of America 1974 Pension Plan and Trust

Respondent's address for service is:

Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8
**Attention: John Sandrelli, Craig Dennis and
Tevia Jeffries**

Fax number address for service (if any): 604-683-5214
E-mail address for service (if any): john.sandrelli@dentons.com
craig.dennis@dentons.com
tevia.jeffries@dentons.com

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.

Partnerships

1. Walter Canadian Coal Partnership
2. Wolverine Coal Partnership
3. Brule Coal Partnership
4. Willow Creek Coal Partnership