

NOV 09 2016

Amended pursuant to Supreme Court Civil Rule 6-1(1)(a).

Original filed on August 26, 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 THE PLAN OF COMPROMISE AND ARRANGEMENT
OF WALTER ENERGY CANADA HOLDINGS, INC., AND THE OTHER PETITIONERS
LISTED ON SCHEDULE "A" TO THE INITIAL ORDER

PETITIONERS

AMENDED NOTICE OF CIVIL CLAIM

This notice of civil claim has been filed by the United Mine Workers of America 1974 Pension Plan and Trust (the "Claimant" or the "1974 Plan") for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the Claimant and the Service List maintained by the Monitor in the above-referenced proceedings (the "**Service List**").

If you intend to make a counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the plaintiff and on any new parties named in the Counterclaim.

Time for Response to Civil Claim

Pursuant to the Claims Process Order made in respect of the Petitioners in the above-referenced proceedings dated August 16, 2016 (the "**Claims Process Order**"), a

Response to Civil Claim must be filed and served on the Claimant and the Service List, no later than September 26, 2016.

CLAIM OF THE CLAIMANT

Part 1: STATEMENT OF FACTS

Parties

1. The United Mine Workers of America 1974 Pension Plan and Trust (the “**1974 Plan**”) is a pension plan and irrevocable trust established in accordance with section 302(c)(5) of the *Labor Management Relations Act of 1947*, 29 U.S.C. § 186(c)(5). It has an address for service for the purpose of these proceedings at: 20th Floor, 250 Howe Street, Vancouver, BC V6C 3R8.
2. Walter Energy Canada Holdings, Inc. (“**Canada Holdings**”) is a company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
3. Walter Canadian Coal ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
4. Wolverine Coal ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
5. Brule Coal ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
6. Cambrian Energybuild Holdings ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
7. Willow Creek Coal ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
8. Pine Valley Coal Ltd. is a company incorporated under the laws of Alberta, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.

9. 0541237 BC Ltd. is a company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
10. Willow Creek Coal Partnership is a partnership organized under the laws of British Columbia, with an address for service at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
11. Walter Canadian Coal Partnership is a partnership organized under the laws of British Columbia, with an address for service at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
12. Wolverine Coal Partnership is a partnership organized under the laws of British Columbia, with an address for service at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
13. Brule Coal Partnership is a partnership organized under the laws of British Columbia, with an address for service at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.

Overview of the 1974 Plan's Claim

14. The 1974 Plan's claim against the Petitioners arises under the *Employee Retirement Income Security Act of 1974, as amended* ("**ERISA**"), 29 U.S.C. §§ 1001 *et seq.*, as well as the United Mine Workers of America 1974 Pension Plan Document (the "**Pension Document**") and United Mine Workers of America 1974 Pension Trust Documents (the "**Trust Document**"), each effective December 6, 1974, and amended from time to time thereafter, and the CBA (as defined below). 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.
15. The Petitioners and Walter Resources are wholly owned subsidiaries of Walter Energy Inc. ("**Walter Energy**"), a U.S. public corporation incorporated under the laws of Delaware. Walter Energy and its various affiliates, including the Petitioners, constitute a single global enterprise with integrated businesses.
16. The contribution obligations of contributing employers to the 1974 Plan, benefit levels provided to the Plan's beneficiaries and participants, and other substantive terms of the 1974 Plan, are established from time to time in collectively

bargained National Bituminous Coal Wage Agreements (each, an "**NBCWA**") between the United Mine Workers of America (the "**UMWA**") and the Bituminous Coal Operators' Association, Inc. (the "**BCOA**"). Until on or about January 11, 2016, Walter Resources was a contributing employer to the 1974 Plan under the terms of the 2011 NBCWA (the "**CBA**"). Previously, on December 28, 2016⁵, the United States Bankruptcy Court for the Northern District of Alabama (the "**US Bankruptcy Court**") entered an order authorizing Walter Energy and its affiliates set out in **Schedule "A"** hereto (the "**US Debtors**") to reject the CBA and declaring that Walter Resources had no further obligation to contribute to the 1974 Plan.

17. As of the effective date of such order (and in any event no later than the closing date of the sale of the US Debtors' core US mining assets on April 1, 2016), Walter Resources effected a withdrawal from the 1974 Plan. Such withdrawal triggered a fixed, non-contingent, joint and several liability of all entities that were at least 80% owned by Walter Energy, either directly or indirectly, as of the date of the withdrawal from the 1974 Plan. The Petitioners are among those entities.
18. Pursuant to a global settlement and a related effectuating order approved by the US Bankruptcy Court (the "**Global Settlement**"), the 1974 Plan has been determined to hold a claim for withdrawal liability against each of the US Debtors in an amount equal to approximately US\$904 million. The anticipated distribution to the 1974 Plan under the Global Settlement is expected to be *de minimis*. The Global Settlement does not release claims of unsecured creditors against the US Debtors or their affiliates
19. The 1974 Plan Claim (defined below) 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. The Petitioners are jointly and severally liable for the withdrawal liability.

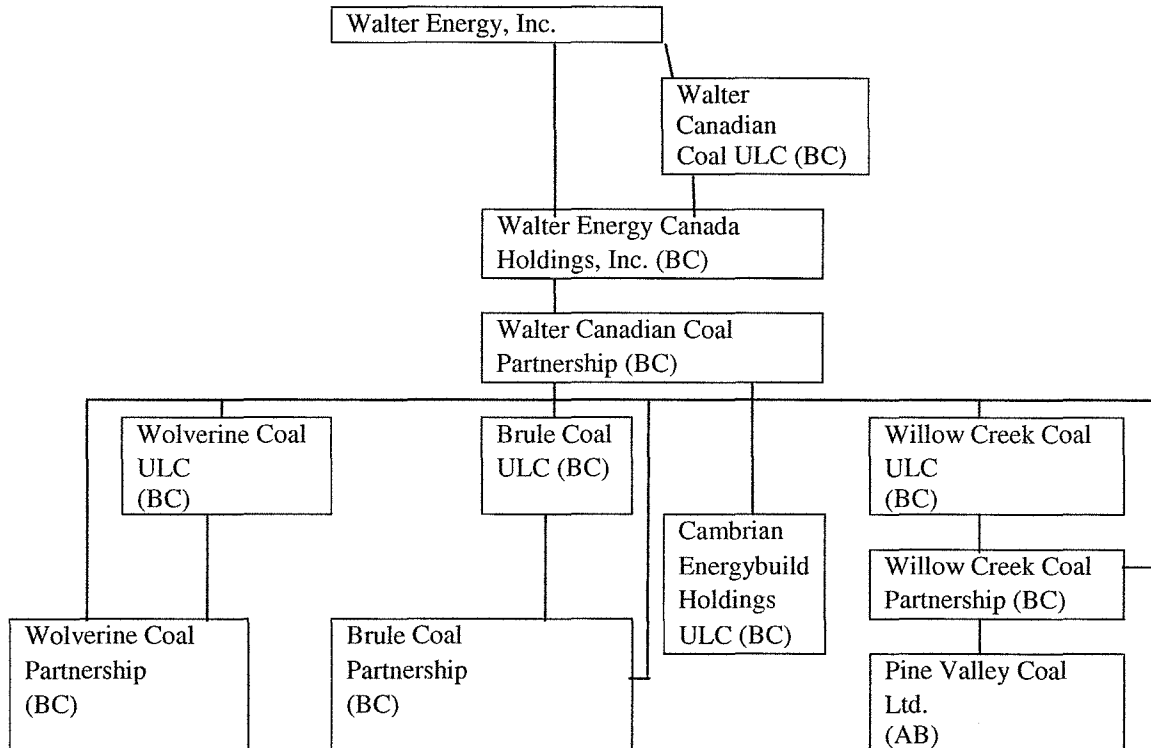
Walter Resources' Participation in the 1974 Plan

20. The 1974 Plan provides pension and death benefits to approximately 90,000 eligible beneficiaries who are retired or disabled coal miners and their eligible surviving spouses and dependents.
21. The 1974 Plan was established through collective bargaining in 1974 between the UMWA and the BCOA.

22. The 1974 Plan is a multiemployer, defined benefit pension plan under section 3(2), (3), (35), (37)(A) of ERISA, 29 U.S.C. § 1002(2), (3), (35), (37)(A).
23. Prior to its withdrawal from the 1974 Plan, Walter Resources (or a predecessor entity) had been a signatory to the 1978, 1981, 1984, 1988, 1993, 2002, 2007 and 2011 NBCWAs, and, pursuant thereto, had been a participating employer in the 1974 Plan.

Common Ownership and Centralized Management of Walter Energy and Affiliates

24. Walter Energy is a public company incorporated under the laws of Delaware and headquartered in Birmingham, Alabama.
25. Walter Resources is wholly owned by Walter Energy.
26. Walter Energy and its affiliates, including, Walter Resources, the other US Debtors and the Petitioners, comprise an integrated enterprise group.
27. The Petitioners comprise Canada Holdings and all entities owned directly or indirectly by Walter Energy that are incorporated or organized under the laws of Canada or its provinces.
28. Walter Canadian Coal Partnership is the Petitioners' principal operating entity.
29. Canada Holdings is the general partner of Walter Canadian Coal Partnership.
30. The principal assets of the Petitioners are the Brule, Willow Creek and Wolverine mines, located in northeast British Columbia, and the Petitioners' 50% interest in the Belcourt Saxon Coal Limited Partnership.
31. Walter Canadian Coal Partnership is a partner of each of the three B.C. partnerships that operate the Canadian mines: Wolverine Coal Partnership, Brule Coal Partnership and Willow Creek Coal Partnership.
32. Each of the partnerships has a separate B.C. unlimited liability company as its other partner.
33. The chart below shows the relationship between Walter Energy and the Petitioners:



34. At all material times, Walter Energy directed and controlled the affairs of the Petitioners centrally from its headquarters in Birmingham, Alabama (“**Headquarters**”).
35. Until these proceedings, Headquarters provided numerous administrative services to Walter Energy and its affiliates, including the Petitioners. Services included finance, tax, treasury, human resources, payroll, benefits and communications, information technology, legal, operations and health, safety and environment, among others.
36. Walter Energy and its US affiliates provided funding for the operational shortfalls and insurance costs of the Petitioners’ subsidiaries resident in the United Kingdom.
37. Under section 4001(b)(1) of ERISA, all entities that are at least 80% owned by the common parent corporation, Walter Energy, wherever incorporated, and all trades or businesses under common control with them, constitute a single employer participating in the 1974 Plan (each, an “**Employer**”). See, 26 U.S.C. § 414(b), (c), 26 C.F.R. § 1.414(c)-2(b), (c).

38. As a result, under ERISA, each of the Petitioners, whether or not a participating employer under the 1974 Plan and whether or not a signatory to the CBA, is an Employer.
39. In addition to any obligations under the CBA and the governing plan documents, Employers are legally subject to "withdrawal liability" accruing upon a partial or complete withdrawal from participation in the 1974 Plan by the participating employer.

The Walter Energy's Expansion into Canada

40. On March 9, 2011, Walter Energy incorporated Canada Holdings.
41. Canada Holdings is wholly owned by Walter Energy.
42. Canada Holdings was incorporated specifically to hold the shares of Western Coal Corp. ("**Western**") and its subsidiaries.
43. Western and its subsidiaries operated coal mines in British Columbia, the United Kingdom and the United States.
44. On April 1, 2011, Canada Holdings acquired all outstanding common shares of Western (the "**Western Acquisition**").
45. The Western Acquisition included the Brule, Wolverine and Willow Creek mines.
46. Total consideration paid by Walter Energy in respect of the Western Acquisition was approximately US\$3.7 billion.
47. Before 2011, Walter Energy did not have any operations or subsidiaries in Canada or the United Kingdom.
48. Concurrently, and in connection with entering into the arrangement agreement with Western, Walter Energy, Western, and Canada Holdings entered into a credit facility (the "**Credit Facility**") with Morgan Stanley Senior Funding, Inc., the Bank of Nova Scotia and the other lenders thereunder (the "**Bank Lenders**").
49. Pursuant to the Credit Facility, subject to the conditions set forth therein, the Bank Lenders committed to providing Walter Energy, Western and Canada Holdings with US\$2.725 billion of senior secured credit facilities.
50. Proceeds of the Credit Facility were used to fund the cash consideration, fees and expenses in connection with the Western Acquisition.

51. The majority of the funding Canada Holdings paid for the Western Acquisition was obtained under a hybrid debt transaction (the “**Hybrid Financing**”).
52. As part of the Hybrid Financing, in substance, Walter Energy advanced approximately US\$2 billion in cash to Canada Holdings to enable Canada Holdings to purchase the Western Coal entities.
53. The Western Acquisition and the Hybrid Financing drained funds from Walter Energy and its US affiliates.
54. Walter Energy incurred significant debt in relation to the Western Acquisition.
55. At the time of the Western Acquisition, Walter Energy knew that it was an Employer.
56. At the time of the Western Acquisition, Walter Energy also knew that the 1974 Plan had an unfunded liability of greater than US\$4 billion.
57. By reason of the Western Acquisition, Walter Energy impaired its ability to satisfy obligations to the 1974 Plan.

Chapter 11 Proceedings

58. On July 15, 2015, the US Debtors commenced proceedings (the “**Chapter 11 Proceedings**”) under Chapter 11 of Title 11 of the United States Code (the “**US Bankruptcy Code**”).
59. On October 8, 2015, the 1974 Plan filed proofs of claim in the Chapter 11 Proceedings (the “**Proofs of Claim**”).
60. Walter Energy’s high debt load, much of which resulted from the Western Acquisition, was a material cause of the Chapter 11 Proceedings.
61. The Western Acquisition removed assets from the United States.
62. Since the Western Acquisition, funds from the US Debtors have gone to support the operations of the Petitioners’ UK subsidiaries and insurance costs related thereto.
63. During the US Proceedings, the US Debtors sought authority from the Bankruptcy Court to sell their US assets and operations free and clear of all liabilities, including any obligations to make ongoing monthly pension contributions to the 1974 Plan under the CBA.

64. The US Debtors also sought authority to reject the CBA, which would terminate the requirement to make monthly pension contributions, giving rise to withdrawal liability against all Employers. .

Withdrawal from the 1974 Plan

65. On December 28, 2015, the US Debtors obtained a judgment from the Bankruptcy Court authorizing the US Debtors, pursuant to sections 1113 and 1114 of the US Bankruptcy Code, to reject the CBA and adjudging and decreeing the CBA rejected (the “**1113/1114 Order**”).
66. The 1113/1114 Order had the effect of terminating Walter Resources’ obligation to make monthly payments to the 1974 Plan.
67. Pursuant to section 4203 of ERISA, the termination of the obligation to make monthly pension plan payments constitutes a complete withdrawal from the 1974 Plan by Walter Resources.
68. Under section 4201 of ERISA, upon its withdrawal from a multiemployer pension plan, a previously contributing employer is immediately liable for its proportionate share of the employer’s unfunded vested pension liabilities or “withdrawal liability”.
69. Thus, by operation of ERISA, as of the effective date of the 1113/1114 Order, all Employers, including the Petitioners, are jointly and severally liable for Walter Resources’ share of the 1974 Plan’s unfunded vested pension liabilities or “withdrawal liability”.
70. In addition, on April 1, 2016, the US Debtors closed a sale of its core mining assets to Coal Acquisition, LLC, which resulted in Walter Resources’ permanently ceasing the operations covered by the 1974 Plan.
71. Cessation of covered operations constitutes a second independent trigger for withdrawal liability of the Employers.

The 1974 Plan Claim

72. As a result of Walter Resources’ withdrawal from the 1974 Plan on December 28, 2016 and the determination of the 1974 Plan’s claim pursuant to the Global Settlement, the 1974 Plan has an allowed withdrawal liability against each Employer in the amount of US\$904,367,132.00 (the “**1974 Plan Claim**”).

73. The 1974 Plan Claim is a valid and enforceable debt as against Walter Energy, and each U.S. or foreign affiliate which meets the test under ERISA for a member of the same “controlled group”, which includes the Petitioners.

U.S. Has Closest and Most Real Connection to Walter Energy Canada’s Withdrawal Liability

74. The Pension Document was signed by the President of the BCOA and the International President of the UMWA in Washington, DC, on September 27, 2011.
75. The Pension Document provides that it is to be interpreted in accordance with ERISA and that withdrawal liability is to be calculated in accordance with ERISA.
76. The CBA provides that trusts and plans connected with the CBA must conform to the requirements of ERISA and other federal laws.
77. The Trust Document was signed by the President of the BCOA and the International President of the UMWA in Washington, DC on January 13, 1975, and amended and restated as of July 1, 2011.
78. The Trust Document provides that:
- (a) the 1974 Plan is to be construed, regulated and administered under the laws of the District of Columbia;
 - (b) the 1974 Plan will have its principal place of business in Washington, DC; and
 - (c) the trustees are authorized to do all acts necessary to comply with ERISA or other federal laws.
79. Walter Energy is incorporated under the laws of Delaware, is headquartered in Birmingham, Alabama, and did business in West Virginia and Alabama.
80. Walter Energy’s board of directors and its management team operated out of Birmingham, Alabama.
81. Walter Resources is incorporated in Alabama and did business in Alabama.
82. Walter Resources’ management team operated out of Birmingham, Alabama.
83. The 1974 Plan is resident in Washington, DC.

84. The trustees of the 1974 Plan are resident in the United States.
85. All participating employers in the 1974 Plan are resident in the United States.
86. The management team and key-decision makers of Canada Holdings operated out of the United States, U.S. law was the legal system with which they were most familiar, they expected U.S. law to govern the business they directed, and they were guided by U.S. law in their actions.
87. The management team and key-decision makers of the other Petitioners operated out of the United States, U.S. law was the legal system with which they were most familiar, they expected U.S. law to govern the business they directed, and they were guided by U.S. law in their actions.
88. After the date of the Western Acquisition, the President of Canada Holdings and the rest of the Canadian operations resided in and worked out of Birmingham, Alabama, in the United States.
89. Until his resignation, the Executive Vice President and Chief Financial Officer of Canada Holdings, Mr. William G. Harvey, was located in Birmingham, Alabama.
90. Mr. Harvey was also the Chief Financial Officer and Executive Vice President of Walter Energy.
91. Additional members of the Petitioner's management team resided in the U.S. and operated out of the Birmingham, Alabama, office.
92. Until his resignation, Danny L. Stickel, sole director of Canada Holdings, 0541237 B.C. Ltd., Walter Canadian Coal ULC, Wolverine Coal ULC, Cambrian Energybuild Holdings ULC, Willow Creek Coal ULC, and Brule Coal ULC, and one of two directors of Pine Valley Coal Ltd., resided in and worked out of the United States and held positions with Walter Energy.
93. At least four of the five officers of Cambrian Energybuild Holdings ULC lived in and worked out of Birmingham, Alabama.
94. At least one of the two officers of Canada Holdings, 0541237 B.C. Ltd., Walter Canadian Coal ULC, Wolverine Coal ULC, Willow Creek Coal ULC, and Brule Coal ULC lived in and worked out of Birmingham, Alabama.

95. The directors and officers of the Petitioners who resigned in 2016 did so after the US Bankruptcy Court had authorized the US Debtors to withdraw from the 1974 Plan.
96. Withdrawal from the 1974 Plan occurred in the United States. The liability created thereby occurred in the United States.
97. The 1113/1114 Order which authorized withdrawal from the 1974 Plan was made by the US Bankruptcy Court.
98. The directors of the Canadian entities were familiar with US law.
99. In relation to operations generally, and the withdrawal liability in particular, the laws and legal system of the United States informed and guided the perceptions and actions of the key players of all of the following:
 - (a) The 1974 Plan;
 - (b) Walter Energy;
 - (c) Walter Resources;
 - (d) Canada Holdings;
 - (e) Walter Canadian Coal ULC;
 - (f) Wolverine Coal ULC;
 - (g) Brule Coal ULC;
 - (h) Cambrian Energybuild Holdings ULC;
 - (i) Willow Creek Coal ULC;
 - (j) Pine Valley Coal, Ltd.; and
 - (k) 0541237 BC Ltd.
100. As the legal system that guided the key players and directing minds of the entities listed in paragraph 99, and the legal system with which these individuals are the most familiar, U.S. law is the law that these individuals expected to govern their relationships and liabilities, including the 1974 Plan Claim for withdrawal liability.

101. The consolidated enterprise, which includes Walter Energy, Canada Holdings and their Canadian and US operations, benefits from the Petitioners' refusal to acknowledge the withdrawal liability.
102. Application of Canadian law works an injustice on the 1974 Plan because of the removal of assets out of reach of ERISA.

Part 2: RELIEF SOUGHT

103. Pursuant to the Claims Process Order made in these proceedings on August 16, 2016, a declaration that the 1974 Plan Claim in an amount of US\$904,367,132.00 is validly due and owing to the 1974 Plan on a joint and several basis by each of the Petitioners;
104. Pursuant to the Claims Process Order, a declaration that the 1974 Plan Claim in an amount of US\$904,367,132.00 is an Allowed Claim against each of the Petitioners.

Part 3: LEGAL BASIS

105. The 1974 Plan's claims against the Petitioners arise under:
- (a) the United Mine Workers of America 1974 Pension Plan and Trust Documents, effective December 6, 1974 and amended from time to time thereafter,
 - (b) the CBA, and
 - (c) the provisions of ERISA that provide for joint and several liability for certain liabilities in respect of the 1974 Plan among all entities under common ownership and control.
106. Having regard to the facts pleaded in paragraphs 74 to 102, in particular, and elsewhere in the Notice of Claim, the law of the United States is the proper law by which to determine the liability of the Petitioners for the 1974 Plan Claim for withdrawal liability.

Plaintiff's address for service: Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8
Attention: John Sandrelli, Craig Dennis &
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

Place of trial: Vancouver, BC

The address of the registry is: The Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

Date: 26/August/2016



Signature of John Sandrelli
Lawyer for 1974 Plan

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a List of Documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

[]

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law

- conflict of laws
- none of the above
- do not know

Part 4: []

SCHEDULE "A"
MEMBERS OF WALTER ENERGY GRANTED CHAPTER 11 PROTECTION

Atlantic Development and Capital, LLC

Atlantic Leaseco, LLC

Blue Creek Coal Sales, Inc.

Blue Creek Energy, Inc.

J.W. Walter, Inc.

Jefferson Warrior Railroad Company, Inc.

Jim Walter Homes, LLC

Jim Walter Resources, Inc.

Maple Coal Co., LLC

Sloss-Sheffield Steel & Iron Company

SP Machine, Inc.

Taft Coal Sales & Associates, Inc.

Tusacaloosa Resources, Inc.

V Manufacturing Company

Walter Black Warrior Basin LLC

Walter Coke, Inc.

Walter Energy Holdings, LLC

Walter Energy, Inc.

Walter Exploration & Production LLC

Walter Home Improvement, Inc.

Walter Land Company

Walter Minerals, Inc.

Walter Natural Gas, LLC