



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