

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 AND ARRANGEMENT OF NEW
WALTER ENERGY CANADA HOLDINGS, INC. NEW WALTER CANADIAN COAL
CORP., NEW BRULE COAL CORP., NEW WILLOW CREEK COAL CORP., NEW
WOLVERINE COAL CORP. AND CAMBRIAN ENERGYBUILD HOLDINGS ULC

PETITIONERS

JOINT NOTICE OF APPLICATION

Name of applicants: United Mine Workers of America 1974 Pension Plan and
Trust (the "**1974 Plan**")
and
United Steelworkers, Local 1-424 (the "**Steelworkers**")

To the respondent: Walter Canada Group

And to its solicitor: Marc Wasserman, Mary Paterson and
Patrick Riesterer
Osler, Hoskin & Harcourt LLP

To the respondent: The Monitor
KPMG Inc.
Anthony Tillman, Jordan Sleeth, and
Mike Schwartzentruber

And to its solicitor: Wael Rostom, Peter Reardon, and Caitlin
Fell
McMillan LLP

To the service list: See attached Schedule "A"

TAKE NOTICE that a joint application will be made by the 1974 Plan and the
Steelworkers to the Honourable Madam Justice Fitzpatrick at the courthouse at

800 Smithe Street, Vancouver, British Columbia on a date and time to be determined by the court or a registrar for the orders set out in Part 1 below.

Part 2: ORDERS SOUGHT

1. An order substantially in the form attached as Schedule "B", *inter alia*,
 - (a) authorizing and directing the Monitor, KPMG Inc., to distribute to Claimants who hold Allowed Claims determined as of the date of the Joint Application the amount of such Allowed Claims as set forth on Schedule "C" hereto;¹ and
 - (b) directing that the Steelworkers' costs be paid from the estate and fixed at the amount of \$75,000.

Part 3: FACTUAL BASIS

Distribution to Proven Creditors the Amount of their Claims

(a) The Claims Process Order

2. On August 16, 2016, the Court made a claims process order setting out the manner in which the creditors of the Walter Canada Group, including the 1974 Plan, should prove or adjudicate their claims (the "**Claims Process**").

Walter Energy Canada Holdings Inc. (Re), (16 August 2016), Vancouver (S-1510120) (B.C.S.C.) ["Claims Process Order"].

(b) The 1974 Plan Claim

3. In accordance with the Claims Process Order, the 1974 Plan filed a notice of civil claim advancing a claim of US\$904 million against each entity of the Walter Canada Group (the "**1974 Plan Claim**").
4. The Walter Canada Group and the Steelworkers opposed allowance of the 1974 Plan Claim.
5. On November 14, 2016, the Walter Canada Group filed a notice of application for an order declaring, *inter alia*, that under Canadian conflict of laws rules, the 1974

¹ All terms not defined herein are as defined in the "Claims Process Order" of Madam Justice Fitzpatrick pronounced August 16, 2016.

Plan Claim is governed by Canadian substantive law and not U.S. substantive law and should be disallowed.

6. The Walter Canada Group's notice of application was supported by the Steelworkers.
7. Arguments in respect of the Walter Canada Group's notice of application were heard by this Honourable Court in January 2017.
8. On May 1, 2017, this Honourable Court delivered its reasons for judgment regarding the 1974 Plan Claim, declaring that under Canadian conflict of laws rules, the 1974 Plan Claim is governed by Canadian substantive law and not U.S. substantive law.

***Walter Energy Canada Holdings Inc.
(Re), 2017 BCSC 709 ["Reasons for
Judgment"]***

9. On May 19, 2017, the 1974 Plan filed a Notice of Application for Leave to Appeal with the British Columbia Court of Appeal.
10. On June 9, 2017, Madam Justice Kirkpatrick ordered that leave to appeal be granted on the question of whether, under Canadian conflict of laws rules, the 1974 Plan Claim is governed by Canadian or U.S. substantive law.

***Walter Energy Canada Holdings Inc.
(Re), (9 June 2017), Vancouver
(CA44448) (B.C.C.A) ["Order for Leave to
Appeal"]***

11. Madam Justice Kirkpatrick further ordered that (a) the hearing of the appeal be expedited, with the appeal to be heard on August 16, 2017, and (b) the order of this Court on the invalidity of the 1974 Plan Claim be stayed pending the determination of the appeal.

Order for Leave to Appeal

(c) The Steelworkers

12. The Steelworkers represents approximately 300 employees who worked at the Walter Canada Group's Wolverine Mine in Tumbler Ridge, British Columbia. These employees have not been paid amounts owing under their collective agreement related to the shutdown of the Wolverine Mine in April 2014.

2nd Affidavit of Randy Gatzka, made July 31, 2017, at paras. 2-3 [“Gatzka Affidavit #2”]

(d) The Allowed and Unresolved Claims

13. Through the Claims Process, Claims of approximately \$13.4 million have been determined to be Allowed Claims.

Tenth Report of the Monitor, KPMG Inc., filed May 24, 2017 [“Monitor’s 10th Report”] at para. 29

14. Of these Allowed Claims, approximately \$12.8 million are Allowed Claims of the Steelworkers, including
- (a) damages for violation of s. 54 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244, in failing to provide notice of shut down and layoff at the Wolverine Mine;
 - (b) severance pay pursuant to collective agreement payable to the 294 employees of the Wolverine Mine who were not recalled within two years; and
 - (c) group termination pay pursuant to s. 64 of the *Employment Standards Act*, R.S.B.C. 1996, c. 113.

Gatzka Affidavit #2 at para. 4

15. The total of the disputed or unresolved Claims, excluding the 1974 Plan Claim, amount to approximately \$19.1 million.

Monitor’s 10th Report at para. 32

16. The Steelworkers has unresolved Employee Claims of approximately \$293,000, as reflected in Schedule “C”.

Monitor’s 10th Report at para. 32

17. The Steelworkers has unresolved Pre-Commencement Claims of approximately \$12,000, as reflected in Schedule “C”.

Monitor’s 10th Report at para. 32

18. In its Tenth Report, the Monitor observed that the appeal is delaying any potential distribution to the Walter Canada Group's Claimants.

Monitor's 10th Report at para. 28

19. Granting the relief sought to authorize and direct the Monitor, KPMG Inc. to distribute to Claimants the amount of their Allowed Claims will ameliorate the significant and mounting impact of these proceedings on the Walter Canada Group's creditors.

Gatzka Affidavit #2 at paras. 10

20. Recognizing same, the 1974 Plan approached the Steelworkers, the Walter Canada Group, and the Monitor with a view to come to a settlement that would enable Allowed Claims determined as of the date hereof to be paid regardless of the outcome of the Appeal.

Gatzka Affidavit #2 at paras. 8-9

Costs

(a) Order for Costs

21. In the Reasons for Judgment, this Honourable Court further awarded costs against the 1974 Plan to both the Petitioners and the Steelworkers at the usual scale subject to the ability of any party to file an application to seek a different order of costs if such party was so inclined.

Reasons for Judgment at para. 183

22. On May 30, 2017, the 1974 Plan filed a Notice of Application seeking an order that all parties bear their own costs or, in the alternative, the costs were to be paid from the estate
23. On June 7, 2017, the Steelworkers responded to the 1974 Plan's application supporting the position that their costs should be paid from the estate.
24. As at the time of the filing of this Notice of Application, the Notice of Application filed May 30, 2017, has been adjourned generally.

(b) The Walter Canada Group's Estate

25. The Monitor's cash flow forecast for the period to September 30, 2017, projects that the Walter Canada Group's estate will have cash of \$61,012,000.

Monitor's 10th Report at para. 54

26. This amount was calculated before the sale of the Walter Canada Group's 50% interest in Belcourt Saxon Coal Ltd. and Belcourt Saxon Coal Limited Partnership and certain related assets to Peace River Coal Inc. The sale price was sealed.

*Walter Energy Canada Holdings Inc.
(Re), (11 July 2017), Vancouver (S-
1510120) (B.C.S.C.)*

Part 4: LEGAL BASIS

Distribution to Proven Creditors the Amount of their Claims

27. The Monitor observed in its Tenth Report that the appeal is delaying any potential distribution to the Walter Canada Group's claimants, the majority of which are former employees.

Monitor's 10th Report at para. 28

28. If the appeal is allowed, then further proceedings before this Honourable Court will be necessary.
29. If the appeal is not granted, then an application for leave to appeal to the Supreme Court of Canada is likely.
30. Accordingly, and regardless of the result at the Court of Appeal, payment to the Steelworkers and the other parties with Allowed Claims will likely be further delayed unless this application is granted.
31. Approving the payment of the Allowed Claims in these proceedings will ameliorate the significant and mounting impact of these proceedings on the employees represented by the Steelworkers. The other party potentially affected is the 1974 Plan, which consents to the payment of Allowed Claims determined as of the date hereof.

Costs

32. To the extent the Steelworkers is to be indemnified for having preserved value in the estate in the litigation against the 1974 Plan Claim, they are entitled to look to the estate to satisfy their costs.

33. Courts have a wide discretion pursuant to s. 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ["CCAA"], to order legal and other professional expenses be paid from the estate of the debtor applicant.

Nortel Networks Corp. (Re) (2009)
53 C.B.R. (5th) 196 at para. 12 ["Nortel"]

34. Case law supports the estate bearing the costs of the representation of the employees of the debtor applicant in a CCAA proceeding.

Nortel at para. 16

35. To the extent that this Honourable Court would be varying its own order with respect to costs made in the adjudication of the 1974 Plan Claim, the Court has the jurisdiction to do so under s. 11 of the CCAA. Exercising this discretion would be just and appropriate in the circumstances.

Part 5: MATERIAL TO BE RELIED ON

36. Affidavit #2 of Randy Gatzka made July 31, 2017;

37. The pleadings and materials filed herein.

The applicant estimates that the application will take 1 hour.

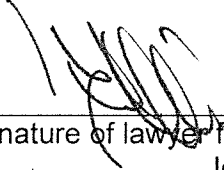
- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

The Honourable Madam Justice Fitzpatrick is seized of these proceedings.

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 of service of this Notice of Application,

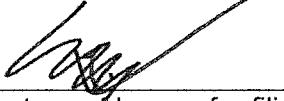
- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, 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).

Date: 31 /JUL/2017



Signature of lawyer for filing party
John Sandrelli
DENTONS CANADA LLP
20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

Date: 31 /JUL/2017



Signature of lawyer for filing party
Craig D. Bavis
VICTORY SQUARE LAW OFFICE
710 – 777 Hornby Street
Vancouver, BC V6Z 1S4

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

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial

- case plan orders: amend
- case plan orders: other
- experts

SCHEDULE "A"

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<p>Akin Gump Strauss Hauer & Feld LLP One Bryant Park Bank of America Tower New York, New York 10036-6745</p> <p>Fax: 212-872-1002 Tel: 212-872-8076</p> <p>Ira Dizengoff, Email: idizengoff@akingump.com</p> <p>Lisa G. Beckerman, Email: lbeckerman@akingump.com</p> <p>Maurice L. Brimmage Email: mbrimmage@akingump.com</p> <p>James Savin Email: jsavin@akingump.com</p>	<p>U.S. Counsel to the Steering Committee of First Lien Creditors of Walter Energy, Inc.</p>
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<p>Victory Square Law Office 710 – 777 Hornby Street</p>	<p>Canadian Counsel to the United Steelworkers, Local 1-424</p>

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<p>Brandt Tractor Ltd. 9500 190th ST. Surrey B.C. V4N 3S2</p>	
<p>Conuma Coal Resources Limited 15 Appledore Lane, P.O. Box 87 Natural Bridge, Virginia 24578</p> <p>Tom Clarke Email: tom.clarke@kissito.org Chuck Ebetino Email: cebetino@erpfuels.com Jason McCoy Email: jmccoy@erpfuels.com Bill Hunter Email: whunter1@optonline.net Robert Carswell Email: bobcarswellus@outlook.com Joe Bean (ERP Internal Counsel) Email: jowabean@gmail.com</p> <p>Conuma Coal Resources Limited P.O. Box 305 Madison, WV 25130</p> <p>Ken McCoy Email: kmccoy@erpfuels.com</p>	<p>Purchaser</p>
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THIS COURT ORDERS that:

1. The Monitor be authorized and directed to distribute to Claimants who hold Allowed Claims (as defined in the "Claims Process Order" of Madam Justice Fitzpatrick pronounced August 16, 2016) determined as of the date of the Joint Application the amount of such Allowed Claims as set forth on Schedule "B" hereto.
2. The Steelworkers' costs be paid from the estate and fixed at the amount of \$75,000.
3. Endorsement of this Order by counsel appearing, other than counsel for the 1974 Plan and Craig D. Bavis, counsel for the Steelworkers, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of John Sandrelli
Lawyer for United Mine Workers of America 1974 Pension Plan and Trust

Signature of Craig D. Bavis
Lawyer for United Steelworkers, Local 1-424

By the Court.

Registrar

SCHEDULE "C"

SUMMARY OF CLAIMS AGAINST WALTER CANADA GROUP

1. Allowed Claims

Allowed Claims	# of Claims	Amount (CAD \$000)
Employee Claims	291	12,676
Other Claim		
Restructuring Claims	4	88
Pre-Commencement Claims	13	581
Total Allowed Claims	308	13,345

2. Unresolved Claims of the United Steelworkers. Local 1-424

Unresolved Claims	Amount (CAD \$000)
Employee Claims	293
Pre-Commencement Claims	12
Total Unresolved Claims of the Steelworkers	305