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 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

NOTICE OF APPLICATION

Name of applicant:	Kevin James
To:	New Walter Energy Canada Holdings, Inc. and the other Petitioners
And to their solicitors:	Marc Wasserman, Mary Paterson and Patrick Riesterer Osler, Hoskin & Harcourt LLP
To:	The Monitor, KPMG, Inc. Anthony Tillman, Jorden 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 an application will be made by the applicant to the Honourable Madam Justice Fitzpatrick at the Law Courts, 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1, on a date and time to be determined by the court or a registrar for the orders set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. A declaration that Kevin James has a proven claim as against Walter Energy Canada Holdings, Inc. in these proceedings;

2. An order that Walter Energy Canada Holdings, Inc. pay to Kevin James the sum of $7,150,000.00 or such other sum as this Honourable Court deems just;

3. Costs; and

4. Such further and other relief as this Honourable Court may deem just.

PART 2: FACTUAL BASIS

1. Kevin James is a professional geologist and was a founder of Western Canadian Coal Corporation ("**Western**"), a company in the business of acquiring and developing coal licences, and the predecessor holder of the properties at issue to Walter Energy Canada Holdings, Inc. ("**Walter Energy**") which was incorporated as a public company in 1997 (collectively, the "**Company**"). Mr. James was one of the first directors and officers of the Company.

Formation of Western

2. Mr. James and Mr. David Fawcett, among others, formed Western in 1997 in order to develop a group of coal licences collectively known as Belcourt (the "**Belcourt Property**").

3. At the time of its formation, Western had four directors – Conrad Swanson, David Austin, Mr. Fawcett and Mr. James. In 1999 Western made its first public offering. Shortly after Western's initial public offering Mr. Swanson resigned, leaving Western with three directors.

4. As a professional geologist, Mr. James was primarily responsible for geological and technical matters. Due to Western's limited finances, Mr. James was employed by Western on a part-time, contract basis.

Development of Properties

5. While Western was focused on developing the Belcourt Property, Mr. James worked on his own to investigate, research, and assess other coal properties in British Columbia. Mr. James was not paid by Western for this independent work.

6. In 1998, Mr. James identified a property known as Burnt River (also known as Brule) that he considered had coal mining potential. Mr. James and Mr. Fawcett personally advanced the necessary funds to acquire the Burnt River licences. Mr. James obtained the coal licences in his name and carried out work relating to the same. Mr. James sold the Burnt River licences to Western at a price equivalent to out-of-pocket expenses.

7. In 1999, Mr. Fawcett and Mr. James identified another set of promising coal licences in what was called the West Brazion property. Western did not have the funds to obtain the licences so Mr. James again obtained the licences, which were registered in his wife's name, and paid for by Mr. James and Mr. Fawcett.

8. In early 2000 Mr. Fawcett and Mr. James negotiated with Mr. Austin, the sole director acting on behalf of Western with regard to acquiring the coal licences held by Mr. James and Mr. Fawcett, to grant Western an option to purchase these licences. Western entered into a separate option agreement in favour of Western for the Burnt River licences held by Mr. James and Mr. Fawcett, which included a 1% royalty on any coal produced from the property in favour of Mr. James and Mr. Fawcett.

9. In late 1999 or early 2000, Mr. James identified a third group of promising coal properties referred to as the Wolverine Group.

10. Mr. James first identified Mount Spieker as an area with potential, and reviewed his findings with Mr. Fawcett. Mr. James and Mr. Fawcett determined that the property should be acquired. Again, Western did not have sufficient capital to acquire the licences. At this time, Mr. James and Mr. Fawcett also did not have sufficient funds to acquire the licences.

11. Funding to acquire the coal licences was arranged through a third party, Mark Gibson. Mr. Gibson advanced funds to acquire the property in the name of Western. Mr. James prepared the coal licence application to ensure that the area of interest was covered. In return for advancing the funds, Mr. Gibson obtained a royalty interest, with an option to acquire a working interest, in the Mount Spieker property.

12. On or about January 15, 2000, Mr. James identified a large number of lapsed licences in the Wolverine Valley area. Mr. James, in consultation with Mr. Fawcett, identified the licences with the best economic interest. These properties became known as Perry Creek and Hermann.

13. Western did not have the funds to obtain the Perry Creek and Hermann licences at the time. Mr. Gibson was again approached to provide funding for the same.

Royalty Sharing Agreement

14. Mr. Gibson was willing to consider funding the licences, however, he was concerned about any royalty interest he would be granted being restricted to only one or two properties while Western held more than those properties. He was concerned that he had no control over the order in which the various properties would be developed and put into production by Western and, thus, whether his royalty interest would be realized in a timely fashion. As a result of this concern, Mr. Gibson suggested there be a pooling of contributions made by himself, Mr. Fawcett, and Mr. James so that all of the relevant properties would be part of the same agreement.

15. Western, through its only independent director, Mr. Austin, who acted solely on behalf of Western, negotiated with Mr. James, Mr. Fawcett, and Mr. Gibson to address these concerns.

16. After a number of discussions with Mr. Austin, it was agreed that a royalty of 1% of the coal produced from the West Brazion, Wolverine and Mount Spieker properties would be paid by Western to Mr. James, Mr. Gibson, and Mr. Fawcett in proportion to their contributions to acquire the properties (the "**Agreement**"). Mr. James, Mr. Gibson, and Mr. Fawcett were to receive a small but continuous royalty on all the coal produced from the properties throughout the productive lifetime of the properties.

17. On the basis of the Agreement, Mr. Gibson and Mr. Fawcett advanced funds to apply for the Perry Creek and Hermann licences. Mr. James did not contribute capital but was allocated consideration of $5,000 in recognition of his efforts to identify the Mount Spieker, Perry Creek, and Hermann properties (collectively, "**Wolverine**").

18. A formal written royalty sharing agreement was drafted. The agreement was dated March 31, 2000, and was between Mr. James, Mr. Fawcett, Mr. Gibson (collectively, the "**Investors**"), and Western (the "**RSA**").

19. The agreement between the parties enabled Western to obtain assets at very little risk as no upfront purchase cost was required. The royalty was low and would only start once the properties were successfully developed. The Investors received a low but continuous interest in the properties for the life of the coal production. The Investors were not willing to give up participation in the mines in the future which Western and Mr. James agreed, was an essential part of the RSA.

20. The RSA was entered into at a time when mining was economically depressed. Western was financially incapable of taking advantage of these opportunities without the RSA. The RSA was instrumental in the survival of Western and enabled Western to obtain new financing. It is Mr. Austin's belief that without the RSA Western would have folded.

21. The RSA was drafted solely by Western's solicitor, Mr. Patrick Devlin, at the sole instruction of Mr. Austin.

22. Mr. Austin instructed Mr. Devlin to draft the RSA in accordance with the Agreement, and specifically instructed Mr. Devlin to include terms that would ensure that the Investors were to obtain an interest in the coal produced from these mines for the lifetime of the mine. The Investors' interest was to run with the mine and were to be assigned if the licences were sold.

23. Mr. Austin specifically asked Mr. Devlin what would happen to the RSA if Western sold the licences. Mr. Austin was told by Mr. Devlin that the RSA provided that the RSA would stay with the properties no matter who owned the licences which was the agreement reached between the parties and was the understanding of both Mr. James and Western.

24. Western and Mr. James relied on Mr. Devlin to draft the RSA to properly reflect the agreement between the parties, and understood that it did.

25. Mr. James was not advised to seek independent legal advice before signing the RSA.

26. Mr. James read and reviewed the RSA carefully, and believed his interest in the life of the coal production of the properties was protected as agreed by the provisions of the RSA. Mr. James understood that the coal licences could not be transferred in any way without the consent of the Investors, not to be unreasonably withheld, or they would revert back to the Investors.

Previous Proceedings

27. The RSA has been the subject of two previous actions. In 2006 Western challenged the RSA and sought to set it aside as being non-compliant with the *Company Act* disclosure requirements. Western was not successful. The Court found that Mr. Austin had sole

authority to negotiate the terms of the RSA on behalf of Western and that the terms were fair and reasonable.

Western Canadian Coal *Corp. v. Fawcett*, [2006] B.C.J. No. 643, 2006 BCSC 463, 149 A.C.W.S. (34d) 801

28. In 2007 Western refused to pay the royalties owing claiming that the payments were payment of a debt and included interest that exceeded the criminal rate of interest. Western was not successful as the claim concerned Mr. James. The Court found that Mr. James' royalty interest of .219% was owed in full. This decision was upheld on appeal in 2010.

Fawcett v. Western *Canadian Coal Corp.*, 2009 BCSC 446,
Fawcett v. Western *Canadian Coal Corp.*, 2010 BCCA 70

Walter Energy Acquires Shares

29. On or about April 1, 2011 Walter Energy acquired all of the outstanding common shares of Western pursuant to an Arrangement Agreement approved by the Supreme Court of British Columbia on March 10, 2011. This was made pursuant to the provisions of the *British Columbia Business Corporations Act.*

30. The RSA was particularly identified as being part of the acquisition which was in accordance with both Mr. James and Western's understanding of the obligations of the RSA.

31. Walter Energy paid Mr. James royalties pursuant to the RSA, when the mine was in production, from the date it took over the mine.

CCAA Proceedings

32. On December 7, 2015, Walter Energy and others commenced proceedings pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 ("**CCAA Proceedings**").

33. An Initial Order was granted in the CCAA Proceedings dated December 7, 2015 (the "**Initial Order**"). Pursuant to the Initial Order, KPMG Inc. was appointed as the Monitor of the Walter Canada Group.

34. By Order dated August 16, 2016, an Approval and Vesting Order was granted in the CCAA Proceedings which included the transfer of the Wolverine and West Brazion licences, without the RSA, pursuant to an Asset Purchase Agreement dated August 8, 2016.

35. Mr. James had objected to the transfer of the Wolverine and West Brazion licences without the RSA claiming that the RSA provided an interest in land (the "**Transfer**").

36. On August 16, 2016, an Order setting a claims process for Walter Energy (the "**Claims Process Order**") was also granted.

37. Mr. James filed a Proof of Claim in the CCAA Proceedings pursuant to the Claims Process Order dated October 1, 2016.

38. On or about October 12, 2016, Mr. James' counsel received a Notice By Debtor Company to Disclaim or Resiliate an Agreement from Walter Energy's Chief Restructuring Officer in the CCAA Proceedings.

39. On or about November 7, 2016, counsel for Mr. James received a Notice of Revision or Disallowance from the Monitor, disallowing Mr. James' Proof of Claim (the "**Notice of Revision**").

40. The Notice of Revision denies Mr. James' claim on the basis that the RSA had been disclaimed, served no further purpose and no monies were due.

41. Mr. James provided a Notice of Dispute to the Monitor dated December 6, 2016.

42. By consent, as a result of other issues in these proceedings, this matter was postponed. To date, however, the dispute between the Company and Mr. James has not been consensually resolved.

Current Status of Wolverine

43. On December 29, 2016, Conuma Coal, an affiliate of ERP Compliant Fuels, announced that it intended to re-open the Wolverine mine on January 2, 2017.

PART 3: LEGAL BASIS

Introduction

1. The Company is bound by contract to pay Mr. James royalties in the amount of .219% for all product tonnes produced from the West Brazion, Mount Spieker and Wolverine coal properties.

2. It is the position of Mr. James that the proper reading of the RSA, when considered within the factual matrix that existed at the time the RSA was entered into, provides that the coal licences, which are the subject of the RSA, could not be transferred or assigned in any way, including by sale, without the prior consent of the Investors, and he is owed damages.

3. In the alternative, it was the clear intention of the parties to the RSA at the time they entered into the RSA, as confirmed by both the Company representative at the time and Mr. James, and the RSA provides, that the obligation to pay Mr. James' interest in the coal licences was to be protected for the productive life of the coal licences. The RSA should be rectified to provide for the clear intention of the parties or such a term implied.

4. In any event, the Company's obligation to pay Mr. James his royalty amounts does not end upon the transfer of the coal licences to another party.

5. The Company is obliged to pay royalties, or the amount of the projected royalties, to Mr. James pursuant to the terms of the RSA, regardless of who owns the licences.

6. In the further alternative, the Company has been unjustly enriched by selling the mining licence rights to the mines which are impressed with an obligation to pay Mr. James a .219% royalty without paying to Mr. James the royalty or .219% of the sum received.

7. Mr. James submits that an appropriate measure of damages is $7,150,000.00 as provided for in the expert report of MNP LLP prepared as at January 2, 2017.

8. Mr. James submits that this matter is appropriately dealt with by way of summary trial as provided for in the Claims Order and the CCAA and that he has a provable claim against Walter Energy in these proceedings.

Procedure

9. The Claims Process Order provides in section 39 that:

> If the disputed Claim cannot be consensually resolved the disputing party may bring a motion on a de novo basis before the Court in these proceedings to resolve the disputed Claim...

10. Pursuant to s. 20(a)(iii), of the CCAA, an appeal of the decision of a Monitor should proceed as a summary trial unless to do so would be unjust, or there is some compelling reason against a summary trial.

> *Pine Valley Mining Corporation* (Re), 2008 BCSC 356, at para. 16.

11. It is submitted that a summary disposition of this matter is appropriate.

Mr. James has a provable claim

12. Section 2 of the CCAA defines a claim as "any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*."

13. On December 7, 2015, the date that the Company filed for CCAA protection, it was subject to the RSA. Pursuant to the RSA, the Company had a legal responsibility, or a liability, to Mr. James.

14. Further, if an agreement is disclaimed or resiliated within CCAA proceedings, then: "a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim."

> CCAA, s. 32(7); see also *Target Canada Co.* (Re), 2015 ONSC 1028 at para. 14

15. Mr. James submits that his Proof of Claim filed on October 1, 2016, relating to the loss he has suffered as a result of the disclaimer of the RSA is a provable claim.

The Company has a continuing contractual obligation to pay Mr. James a royalty

16. The goal in interpreting an agreement is to discover, objectively, the parties' intention at the time the contract was made by considering the language used in the agreement itself and also the context of the surrounding circumstances prevalent at the time of the agreement.

> *Gilchrist v. Western Star Trucks Inc.* (2000), 73 B.C.L.R. (3d) 102, 2000 BCCA 70, paras. 17 – 18

17. When interpreting contracts, courts should ascertain and give effect to the intention of the parties at the time the contract was entered into.

> *CivicLife.com Inc. v. Canada (Attorney General)*, 2006 CanLII 20837 (ON CA) at para. 49; *Miller v. Convergys CMG Canada Limited Partnership*, 2014 BCCA 311 at para. 15

18. A clause in an agreement must be interpreted in its place in the agreement as a whole, and must be considered within the "context, scheme and objectives" of the entire agreement.

> *Jacobsen v. Bergman*, 2002 BCCA 102 ("*Jacobsen*"), para. 3; *Hundley v. Garnier*, 2012 BCCA 199 ("*Hundley*")

19. The agreement as a whole must then be examined in the context of the "factual matrix" which gave rise to the agreement and against which the agreement and clause were intended to operate.

> *Jacobsen*; *Hundley*

20. The factual matrix and context of an agreement takes on additional importance when significant time has passed since the contract was made.

> *Oddguys Holdings Ltd. v. S.C.Y. Chow Enterprises Co. Ltd.*, 2010 BCCA 176 at para. 21

21. Section 2.1 states

> As consideration for advancing the funds, the Company will pay a royalty (the "Royalty") of one percent (1%) of the price (FOBT at Port) for all product tonnes produced from the West Brazion, Mount Spieker and Wolverine coal properties on a quarterly basis to the Investors as set out in Schedule "2.1" attached hereto and forming a material part hereof.

22. Section 3.1 then provides various representations and warranties of the Company including in 3.1(b) which provides that the Company will be the beneficial owner of all of the coal licences at issue.

23. Section 3.2 states:

> The representations and warranties contained in paragraph 3.1 above are provided for the exclusive benefit of the Investors and any breach of any one or more thereof may be waived by the Investors in whole or in part at any time without prejudice to its rights in respect of any other breach of the same or any other representation or warranty and the representations and warranties contained in paragraph 3.1 shall survive the execution hereof.

24. The sale of the licenses without consent of the Investors was not permitted pursuant to section 3.2 and is a breach of the representation and warranty 3.1(b) provided by the Company.

25. These sections, read in conjunction with section 8.1 which provides that the Agreement cannot be assigned without the consent of the Investors, are consistent with the stated intent of the RSA, as provided by both Mr. James and the Company, that the royalties were to be for the life of the mines and would stay with the properties no matter ownership. The Investors had to agree to any change in ownership under s. 8.1 as the RSA was to stay with the properties.

26. Sections 4.3 and 9.1 of the RSA further support the interpretation that the royalty holders were to be involved in determining any change in ownership of the licenses.

27. The Company, who was responsible for drafting the RSA, did not include a clause permitting the Company to sell or otherwise transfer the licences in any manner without breaching their representation and warranty in section 3. Consent of the parties had to be obtained.

28. The RSA provides, and both parties who entered into the RSA confirm, that it was the intention that the royalty holders were to have their royalty interest for the life of the mine.

29. To interpret the RSA in any other way defeats the purpose of the RSA, is contrary to the stated intention of the parties at the time the RSA was entered into who are *ad item* on this issue, and is inconsistent with a reading of the RSA as a whole.

30. Mr. James did not obtain independent legal advice prior to entering into the RSA. Mr. James reviewed the RSA in detail and believed that his interest in the coal licences were protected by the RSA as drafted and as represented by the Company.

31. The Supreme Court of Canada has clearly stated that parties to commercial contracts are subject to a duty of honest performance, which entitles contracting parties "to rely on a minimum standard of honesty from their contracting partner in relation to performing the contract as a reassurance that if the contract does not work out, they will have a fair opportunity to protect their interests," particularly if one party seeks to evade contractual duties.

Bhasin v. Hrynew, 2014 SCC 71, at para. 86

32. The interpretation of the RSA advanced in the Notice of Revision allows the Company to evade performance of its contractual duties under the RSA, while still obtaining the many benefits provided by the Investors, including the conducting of exploration, financing and low royalty rates and the survival of the Company.

33. It is submitted that a proper reading of the RSA provides that the coal licences cannot be transferred, sold, or assigned in any way without the consent of the Investors. An interpretation of the RSA that allows for transfer of the licences is inconsistent with and contrary to the scheme, purpose, and intent of the RSA as found in the document when read as a whole and as stated by the parties who negotiated and provided instructions for the drafting of the RSA.

In the alternative, the RSA should be rectified to reflect the true intentions of the parties

34. Rectification is an equitable remedy that will be granted when a party demonstrates that the parties to an agreement had the same intentions as to what the agreement was to

contain, that intention continued to the time of execution and formed the basis for execution by the parties.

Dynamex Canada Inc. v. Miller, 1998 CarswellNfld 88 ("**Dynamex**") at para 27

35. Rectification enables a Court to adjust the language of a written document to bring it into accord with the actual agreement of the parties.

36. Rectification is appropriate when the Court is clearly satisfied that the document in question does not harmonize with the true intentions of the parties. It allows a court to give effect to the true intentions of the parties where they have settled upon the terms but have not written them down correctly.

Dynamex, at para 18
Canada (Attorney General) v. Fairmont Hotels Inc., 2016 SCC 56 ("***Fairmont***") at para. 12

37. A party must also show that the contract fails to record accurately the agreement of the parties at the time that the contract was entered into and if rectified as proposed, the contract would carry out the agreement.

Fairmont at para. 14

38. The Court may examine all evidence, direct and circumstantial, in determining a suitable case for rectification.

Dynamex at para. 27

39. Up to the time of execution, the Company and the Investors intended that the Investors' interest in the coal licences was to be for the productive life of the mines, and that the licences could not be transferred unless all parties agreed as the Investors would have to waive s. 3.1(b). This intention formed the basis for the execution of the RSA by the parties, and influenced the terms of the RSA, including the percentage of the royalty, the timing as to when the royalty would start, and the benefits received by the Company as a result of the concessions of the Investors.

40. The RSA should be rectified to reflect the intention of the parties at the time of execution being that the licenses could not be sold, transferred or otherwise assigned without the consent of the Investors.

In the further alternative, a term restricting transfer of licences without consent should be implied

41. If this Court does not find that the language set out in the RSA is to be interpreted as set out above, it is submitted that there should be an implied term in the RSA providing that the licenses could not be sold, transferred or otherwise assigned without the consent of the Investors.

42. Terms can be implied into contracts if required for business necessity, or to avoid an absurd result.

Zeitler v. Zeitler (Estate), 2010 BCCA 216

43. Terms may be implied in a contract: (1) based on custom or usage; (2) as the legal incidents of a particular class or kind of contract; or (3) based on the presumed intention of the parties where the implied term must be necessary to give business efficacy to a contract.

> *Canadian Pacific Hotels Ltd. v. Bank of Montreal*, [1987] 1 S.C.R. 711 ("***Canadian Pacific***"); *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, 1999 CanLII 677 (S.C.C.) at para. 27; *Wallace v. United Grain Growers Ltd.* [1997] 3 S.C.R. 701 at 137

44. The test for implied terms based on the presumed intentions of the parties is whether the implication of a term is "necessary to give business efficacy to a contract or as otherwise meeting the 'officious bystander test' as the term the parties would say, if questioned, that they had obviously assumed."

> *Canadian Pacific* at 775

45. The interpretation of the RSA advanced in the Notice of Disallowance would defeat the purpose of the RSA, it runs contrary to s. 3.1(b), it is contrary to the agreement by the Investors to accept a low royalty rate and deferred payment and would lead to a commercially absurd result whereby one party could unilaterally defeat the rights of the other at any time. It also is contrary to the actions of the parties during the course of the RSA.

46. Mr. James submits that the Court should imply a term to the RSA restricting the sale or transfer of the coal licences without the consent of the Investors.

The transfer of the licences does not negate the Company's obligation to pay the royalty

47. The contractual obligation of the Company to pay the royalty is not contingent upon the Company owning or operating the mine.

48. The RSA acknowledges that the Investors have already provided their consideration for the RSA. The Company agreed to provide its consideration and payment for the licences as set out in section 2.1.

49. Section 2.1 simply determines the extent and timing of payment, it does not require that the Company is the party producing the product.

50. There is no term in the RSA that requires the Company to be the party owning the licences or operating the mines for the royalty to be owed. Similarly, there is no termination clause if the licences were sold. The obligation remains in contract and fair value should be paid to the royalty holder.

> *Third Eye Capital Corporation v. Dianor Resources Inc.*, 2016 ONSC 6086 ("**Third Eye**")

51. The warranty, as set out in section 3.1(b), that the Company will own the licences at issue, is a warranty for the exclusive benefit of the Investors. The Company cannot rely upon their breach of this warranty to end the obligation to pay the royalty.

Unjust enrichment

52. In the alternative, the Company has been unjustly enriched.

53. The Company has sold the licenses which are the subject of the RSA and impressed with the royalty obligation.

54. The Company has received the full benefit of the purchase price of the sale. As a result of the sale and the failure to assign the RSA to the new owners, Mr. James has been deprived of his royalty interest.

55. There is no juristic reason for the Company to be able to fully benefit from the sale of the licenses without compensating Mr. James.

56. Mr. James' damages are the amount of royalties that he would have received or, in the alternative, his royalty percentage of the amount received by the Company for the sale.

Valuation of Mr. James' Claim

57. The damage suffered by Mr. James are .219% of the product tonnes produced from the West Brazion, Mount Spieker and Wolverine mines for the life of those mines. The damages that Mr. James is entitled to are the royalties that Mr. James would have received under the RSA if the licenses had not sold. The expected production from these mines, along with requisite discounts to be applied, results in an amount owed in a range of between $6,900,000 and $7,400,000 with a mid-point being $7,150,000.

Third Eye; Expert Report of MNP LLP as at January 2, 2017

58. In the alternative, Mr. James would be entitled to .219% of the proceeds of the sale of the licenses.

PART 4: MATERIAL TO BE RELIED ON

1. Affidavit #2 of Kevin James, sworn January 25, 2017.

2. Affidavit #1 of David Austin, sworn February 27, 2017.

3. Affidavit #1 of Michael Sileika, sworn October 6, 2017.

The applicant estimates that the application will take one day.

[ ] This matter is within the jurisdiction of a master.

[x] 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 five business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within eight 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 two 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: 06 / Oct / 2017

Signature of Lawyer for Applicant,
Kevin James

Heather L. Jones

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 matters concerning oral discovery
- [ ] amend pleadings
- [ ] add/change parties
- [ ] summary judgment
- [x] summary trial
- [ ] service
- [ ] mediation
- [ ] adjournments
- [ ] proceedings at trial
- [ ] case plan orders: amend
- [ ] case plan orders: other
- [ ] experts

SCHEDULE "A"

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

NOTICE OF APPLICATION of KEVIN JAMES dated October 5, 2017

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