Amended per SC Rule 6-1(1)(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 WALTER ENERGY CANADA HOLDINGS, INC., AND THE OTHER PETITIONERS
LISTED ON SCHEDULE "A" TO THE INITIAL ORDER

PETITIONERS
(APPLICANTS)

AMENDED RESPONSE TO CIVIL CLAIM

Response Filed By: United Steelworkers, Local 1-424 (the "Respondent Steelworkers")

PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraph(s) 2, 4 of Part 1 of the amended NOCC are admitted by the Respondent Steelworkers.

2. The facts alleged in paragraph(s) 34, 35, 69, 72, 73, 86, 87, 99-102 of Part 1 of the amended NOCC are denied by the Respondent Steelworkers.

3. The facts alleged in paragraph(s) 1, 3, 5 to 34, 36 - 68, 70, 71, 74-85, 88-98 of Part 1 of the amended NOCC are outside the knowledge of the Respondent Steelworkers.

Division 2 – Defendant's Version of Facts

4. Contrary to the allegations in paragraphs 34 and 35 of the NOCC, the operations of the Petitioners which involved the Respondent Steelworkers were directed, controlled, and supported in British Columbia through the Petitioners, not Walter Energy's US affiliates.

The 1113/1114 Order

5. The 1113/1114 Order referenced in paragraph 65 of the NOCC was issued following a hearing on December 15 and 16, 2015 of the United States Bankruptcy Court for the Northern District of Alabama (the "US Bankruptcy Court") in which the United Mine Workers of America participated. None of the Petitioners were named as debtors in that proceeding or participated.

6. The US Bankruptcy Court permitted Walter Energy US to withdraw from the collective bargaining agreement and participation 1974 Plan in the 1113/1114 Order after consideration of the interests of retirees and other stakeholders under the pension plan, the *Coal Industry Retiree Health Benefit Act* of 1992, and the *Bankruptcy Code* in order to allow operations to be sold as a going concern.

7. If the 1974 Plan cannot meet its obligations to provide basic retiree benefits, *ERISA,* 29 U.S. Code § 1431, requires the Pension Benefit Guaranty Corporation to provide financial assistance to the 1974 Plan to pay those benefits.

8. The judgement of the US Bankruptcy Court did not consider any of the assets of the Petitioners or the Canadian operations in making the 1113/1114 Order or treat the Petitioners as a controlled group with the Walter Energy US affiliates.

9. The Proof of Claim filed by the 1974 Plan and endorsed by the US Bankruptcy Court (the "US 1974 Plan Claim") which the 1974 Plan relies upon in this proceeding does not contain any reference to the Petitioners or Canadian enforceability of the Proof of Claim.

Division 3 – Additional Facts

The Steelworkers

10. Walter Energy and Wolverine Coal Ltd. operating as Wolverine Coal Partnership ('Wolverine") own and operate an open pit coal mine near Tumbler Ridge BC (the "Wolverine Mine").

11. The Steelworkers is the certified bargaining agent for production and maintenance employees at the Wolverine Mine, representing approximately 308 employees.

12. The Steelworkers and Wolverine are parties to a collective agreement, with a term August 1, 2011 to July 31, 2015, (the "Collective Agreement") which continued until the sale of the Wolverine Mine in September 2016 and which now applies to the purchaser and the Steelworkers.

Canadian control of Wolverine Mine

13. The Steelworkers bargained the Collective Agreement with the management of Wolverine, who executed the Collective Agreement on its behalf: Hugh Kingwell, John Moberg and Michael Milner.

14. At all times during collective bargaining, the management of Wolverine represented that they had the authority to negotiate and conclude the Collective Agreement, not Walter Energy's US affiliates.

15. At no point did the management Wolverine represent that the Wolverine Mine operations or collective bargaining was controlled or directed by Walter Energy's US affiliates.

16. Collective bargaining was conducted based on Canadian market conditions, economics expectations and the comparable Canadian operations.

17. The Steelworkers has dealt with Wolverine management, primarily Hugh Kingwell, formerly Human Resources Director of Wolverine (now Human Resources Director of Walter Canadian Coal Partnership) in administering the Collective Agreement and dealing with grievances, not Walter Energy's US affiliates.

18. Administrative services at the Wolverine Mine which involve the Steelworkers including payroll, human resources, health and safety, benefits, and the environment were provided by Wolverine, or Walter Canadian Coal Partnership, not Walter Energy's US affiliates.

19. Mining operations and production at the Wolverine Mine were directed through Wolverine, not Walter Energy's US affiliates.

The Steelworkers' Employee claims

20. The Steelworkers and its members have significant claims (included in the class of "Employee Claims" in the Claims Process Order) against the Petitioners pursuant to the Collective Agreement, the *Labour Relations Code*, and the *Employment Standards Act.*

21. The combined value of the Steelworkers' Employee Claims not been precisely determined as the claim process is continuing, but the Monitor has estimated the claims may be approximately ten million dollars.

22. The claims of the Steelworkers include:

a) damages for violation of section 54 of the *Labour Relations Code*, in failing to provide notice of shut down and layoff of the Wolverine Mine in April 2014;

b) Severance Pay pursuant to Collective Agreement payable when approximately 294 employees laid off in April 2014 were not recalled within 2 years; and

c) Group Termination Pay pursuant to the *Employment Standards Act* because laid off employees were not provided any working notice of termination.

23. The 1974 Plan Claim, if allowed at its claimed value of $900 million US, will almost eliminate any recovery for the members of the Steelworkers' Employee Claims, including those arising under the Collective Agreement.

PART 2: RESPONSE TO RELIEF SOUGHT

24. The Respondent Steelworkers consents to the granting of none of the relief sought in Part 2 of the notice of civil claim.

25. The Respondent Steelworkers opposes the granting of all the relief sought in of Part 2 of the notice of civil claim.

26. In the alternative, if the 1974 Plan Claim is allowed, it must be in a separate class than the Employee Claims and only paid out after the Employee Claims are satisfied in full.

PART 3 : LEGAL BASIS

27. The *ERISA* does not have and was not intended to have extra-territorial effect outside of the United States.

28. The US 1974 Plan Claim was not intended have extra-territorial effect outside of the United States.

29. The 1974 Plan has not established that the Petitioners are a "controlled group" of Walter Energy's US affiliates pursuant to *ERISA*.

30. The definition of 'controlled group" under *ERISA* cannot confer liability on Canadian entities which are not otherwise liable.

31. Allowing the1974 Plan Claim will effectively eliminate the Employee Claims for the Steelworkers and is therefore not a reasonable or equitable plan.

32. The Severance Pay is payable pursuant to the Collective Agreement, negotiated through the collective bargaining process. If the 1974 Plan Claim is allowed and the payment of the 1974 Claim interferes with the Collective Agreement including the Severance Pay, such interference violates the Steelworkers' freedom of association pursuant to section 2(d) of the *Charter of Rights and Freedoms*.

33. Effectively eliminating the Steelworkers Employee Claims in order to satisfy a small percentage of a foreign claim is not demonstrably justified under section 1 of the *Charter of Rights and Freedoms*.

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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.