

Amended pursuant to Supreme Court Civil Rule 6-1(1)(a).
Original filed on September 23, 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. c. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT
OF WALTER ENERGY CANADA HOLDINGS, INC., AND THE OTHER PETITIONERS
LISTED IN SCHEDULE "A" TO THE INITIAL ORDER

PETITIONERS

AMENDED RESPONSE TO CIVIL CLAIM

**Filed By United Mine Workers Of America 1974 Pension Plan And Trust
(the "1974 Plan")**

Response Filed by: Petitioners (the "Walter Canada Group")

PART 1: RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM FACTS

Division 1: The Walter Canada Group's Response to Alleged Facts

1. The facts alleged in paragraphs 2 to 13, 24, 25, 27 to 29, 31, 32, 35, 40 to 48, 50 to 52, 54, 58, 79 and 5890 of part 1 of the amended notice of civil claim are admitted by the Walter Canada Group.
2. The facts and conclusions alleged in paragraphs 14, 15, 17, 19, 26, 30, 33, 34, 37 to 39, 49, 53, 57, 61, 69-69 and 71 to 7373, 86 to 89, 91 to 95, 98, 99(d)-(k), and 100 to 102 of part 1 of the amended notice of civil claim are denied in whole or in part by the Walter Canada Group.
3. The facts alleged in paragraphs 1, 16, 18, 20 to 23, 36, 55 to 56, 59 to 60, 62, 63 to 6868, 70, 74 to 78, 80 to 85, 96, 97, and 7099(a)-(c) of part 1 of the amended notice of civil claim are outside the knowledge of the Walter Canada Group.

Division 2: The Walter Canada Group's Version of the Facts

Procedural Matters

4. This response to civil claim has been prepared pursuant to the Claims Process Order pronounced by the Supreme Court of British Columbia on August 16, 2016 in the *Companies' Creditors Arrangement Act* proceedings of the Walter Canada Group (the "**CCAA Proceedings**") and responds to the allegations made by the 1974 Plan in its notice of civil claim dated and filed August 26, 2016.
5. The notice of civil claim filed by the 1974 Plan and this response is the court-approved mechanism pursuant to which the 1974 Plan must prove its claim in the CCAA Proceedings pursuant to the Claims Process Order.
6. Many of the paragraphs in the 1974 Plan's notice of civil claim are statements of legal conclusions or mixed statements of fact and legal conclusions regarding the Walter Canada Group's alleged liability under ERISA or otherwise and are denied as such.
7. For greater certainty, the Walter Canada Group denies any legal conclusions stated in the 1974 Plan's notice of civil claim.

The Walter Canada Group's corporate structure and history

8. The corporate chart included at paragraph 33 of the 1974 Plan's notice of civil claim contains inaccuracies. Contrary to paragraph 33 of the 1974 Plan's notice of civil claim,
 - a. ~~(a)~~—Walter Canadian Coal ULC is a wholly owned subsidiary of Walter Energy Canada Holdings, Inc. and a partner of Walter Canadian Coal Partnership; and
 - b. ~~(b)~~—Walter Canadian Coal Partnership is one of two partners of Willow Creek Coal Partnership.
9. A corrected corporate chart is attached as Exhibit "A" to this response to civil claim.
10. Contrary to paragraph 34 of the 1974 Plan's notice of civil claim, Walter Energy, Inc. did not direct and did not control the affairs of the Walter Canada Group "at all material times".
11. At all relevant times, the entities that comprise the Walter Canada Group were operated as separate and independent legal entities from Walter Energy, Inc. and its US subsidiaries and affiliates (the "**Walter US Group**").
12. The Walter Canada Group operated in a different market than the entities that comprised the Walter US Group.
13. Unlike the Walter US Group, the Walter Canada Group operated in Canada and principally supplied coal to customers in Asia.
14. The Walter Group's public reporting divides the Walter Group into the Walter US Group and the Walter Non-US Group reporting segments.

15. Contrary to paragraph 30 of the 1974 Plan's notice of civil claim, the Walter Canada Group's principal assets are cash and its direct and indirect interest in the Walter Canada Group's subsidiaries in Wales (the "**Walter UK Group**").
16. The Walter Canada Group's Canadian mines and mining assets have been sold.
17. The 1974 Plan was established approximately 38 years before the Walter Canada Group was formed to acquire assets in Canada.
18. The 1974 Plan admits that it was underfunded by approximately US\$4 billion prior to the formation of the Walter Canada Group and prior to the acquisition of Western Coal Corp. and its affiliates (the "**Western Acquisition**").
19. The Walter Canada Group did not exist during the material times while the US\$4 billion 1974 Plan pension deficit was accruing.
20. The following members of the Walter Canada Group did not exist in July 2011 when the CBA and Plan Documents were last amended:
 - a. ~~(a)~~ Brule Coal ULC,
 - b. ~~(b)~~ Brule Coal Partnership,
 - c. ~~(c)~~ Cambrian Energybuild Holdings ULC
 - d. ~~(d)~~ Wolverine Coal ULC
 - e. ~~(e)~~ Wolverine Coal Partnership
 - f. ~~(f)~~ Walter Canadian Coal ULC
 - g. ~~(g)~~ Walter Canadian Coal Partnership

Walter US Group Chapter 11 proceedings and 1974 Plan claims

21. The Walter Canada Group has not been involved in the Walter US Group's Chapter 11 proceedings.
22. The Walter Canada Group observes that the references to December 28, 2016 in paragraphs 16 and 74 appear to be typographical errors.

Walter UK Group

23. Contrary to paragraphs 30 and 62 of the 1974 Plan's notice of civil claim, the Walter Canada Group is not aware of whether or not the Walter US Group funded the Walter UK Group's insurance costs.

The Walter Canada Group has no obligations to the 1974 Plan

24. The Walter Canada Group is not party to an any collective bargaining agreement with the United Mine Workers of America, including any National Bituminous Coal Wage Agreements, (each a “CBA”) or to any of the United Mine Workers of America Pension Plan and Trust Documents (the “Plan Documents”).
25. The Walter Canada Group did not employ any of the beneficiaries of the 1974 Plan or any person who was a member of the United Mine Workers of America union.
26. The Walter Canada Group did not contribute to the 1974 Plan.
27. The Walter Canada Group did not have any obligation to contribute to the 1974 Plan.
28. The Walter Canada Group does not have assets or carry on business in the United States.

The Western Acquisition

29. Contrary to paragraphs 53, 57 and 61, the Walter Canada Group denies that the Western Acquisition “drained funds” from Walter Energy, Inc. and its US affiliates, impaired the Walter US Group’s ability to meet any alleged liability to the 1974 Plan or “removed assets” from the United States.
30. Walter Energy, Inc. acquired assets valued at US\$3.7 billion for cash consideration drawn under the Credit Facility and for equity consideration consisting of common stock of Walter Energy, Inc.
31. Two thirds of the consideration paid for the Western Acquisition consisted of cash consideration.
32. One third of the consideration paid for the Western Acquisition consisted of common stock of Walter Energy, Inc.
33. Approximately US\$2.1 billion of the US\$2.725 billion drawn under the Credit Facility was used to fund the Western Acquisition.
34. Contrary to paragraph 50 of the 1974 Plan’s notice of civil claim, the Credit Facility was also used to pay existing Walter US Group debt and to pay fees.
35. The acquired assets included the Walter Canada Group’s Brule, Wolverine and Willow Creek mines, equipment and other assets; the Walter UK Group’s Welsh mine, equipment and other assets; and certain mines, equipment and other assets located in the United States, including four mines, two properties and a number of other coal mining assets in West Virginia.
36. Walter Energy, Inc.’s Western Acquisition was publically announced and was completed pursuant to a plan of arrangement approved by the British Columbia Supreme Court in April 2011.
37. The Western Acquisition substantially increased Walter Energy, Inc.’s reserves available for future production, the majority of which was metallurgical coal, and created a diverse geographical footprint with strategic access to high growth steel-producing countries in both the Atlantic and Pacific basins.

38. The subsequent dramatic decline in coal prices was not anticipated at the time of the Western Acquisition.
39. At no time did the Walter Canada Group – which did not exist when Walter Energy, Inc. began the Western Acquisition – direct Walter Energy, Inc.’s investment or resource allocation decisions.
40. Contrary to paragraph 49 of the 1974 Plan’s notice of civil claim, the members of the Walter Canada Group were only liable for amounts drawn on the portion of the Credit Facility that consisted of the Canadian revolver.
41. Walter Energy Canada Holdings, Inc. and Western Coal Corp did not borrow and are not liable for US\$2.725 billion under the Credit Facility or for the US revolver portion of the Credit Facility.
42. The Walter Canada Group has no material liabilities under the Credit Facility.

Causes of insolvency

43. Contrary to paragraph 60 of the 1974 Plan’s notice of civil claim, the causes of the Walter US Group’s insolvency were manifold, and included the precipitous decline in coal prices, debt servicing obligations and crippling legacy labour costs such as costs associated with the CBA and the 1974 Plan.

PART 2: RESPONSE TO RELIEF SOUGHT

44. The Walter Canada Group opposes the relief sought in paragraphs 74 and 75 of the 1974 Plan’s notice of civil claim.
45. All claims of the 1974 Plan against the Walter Canada Group should be denied. No 1974 Plan claim should become Allowed Claims under the Claims Process Order.

PART 3: LEGAL BASIS

46. The Walter Canada Group is not a party to the CBA and has no liability for any claims arising in connection therewith.
47. The Walter Canada Group is not a party to the Plan Documents and has no liability for any claims arising in connection therewith.
48. The 1974 Plan’s claim against the Walter Canada Group appears to arise solely from the 1974 Plan’s interpretation of the United States’ *Employment Retirement Income Security Act of 1974* (“ERISA”).
49. The 1974 Plan is seeking to have this Court disregard the separate legal personality of the corporate members of the Walter Canada Group and other essential legal characteristics of corporations and partnerships that arise as a matter of British Columbia and Alberta law.
50. The relief sought by the 1974 Plan will effectively amalgamate all members of the Walter Canada Group with Walter Energy, Inc., Jim Walter Resources Inc. and their US subsidiaries

and affiliates for the benefit of the 1974 Plan and to the detriment of all the other creditors of the Walter Canada Group.

51. The provisions of ERISA that allegedly make the Walter Canada Group jointly and severally liable to the 1974 Plan for any liabilities of Walter Energy Inc. and Jim Walter Resources, Inc. do not apply in Canada for numerous reasons, including Canadian law and Canadian conflict of laws principles, United States law and conflict of law principles, and Canadian public policy.
52. The alleged US\$900 million 1974 Plan claim is many times higher than the claims of any known creditors of the Walter Canada Group. If the 1974 Plan claim is admitted as an Allowed Claim, there will be little to no recovery for the creditors of the Walter Canada Group.

Walter Canada Group's address for service:

DLA Piper (Canada) LLP
Suite 2800, Park Place
666 Burrard St
Vancouver, BC V6C 2Z7
Attention: Mary I.A. Buttery
and

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario M5X 1B8
Attention: Marc Wasserman

Fax number address for service (if any):

none

E-mail address for service (if any):

mary.buttery@dlapiper.com

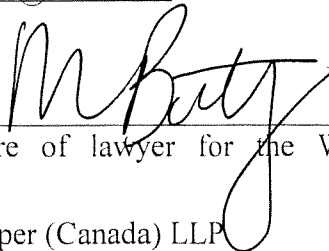
lance.williams@dlapiper.com

mwasserman@osler.com

mpaterson@osler.com

priesterer@osler.com

Date: September 23, 2016



Signature of lawyer for the Walter Canada Group
DLA Piper (Canada) LLP
(Mary I.A. Buttery and Lance Williams)

and

Osler, Hoskin & Harcourt LLP
(Marc Wasserman, Mary Paterson and Patrick
Riesterer)

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.

Exhibit "A"

