



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
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

APPLICATION RESPONSE

Application response of: KEVIN JAMES,
a Creditor of Walter Energy Canada Holdings, Inc. ("Walter Energy")
(the "Application Respondent")

THIS IS A RESPONSE TO the Joint Notice of Application of the United Mine Workers of America 1974 Pension Plan and Trust (the "**1974 Plan**") and the United Steelworkers, Local 1-424 ("**Steelworkers**", and together with the 1974 Plan, the "**Applicants**" filed the 4th day of August, 2017 (the "**Notice of Application**"), and to be heard August 15, 2017 at 9:00 a.m.

Part 1: ORDERS 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: 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: Paragraphs 1(a) and 1(b).

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondent takes no position on the granting of the orders set out in Part 1 of the Notice of Application: None.

Part 4: FACTUAL BASIS

1. This Application Response is delivered by Kevin James in response to the Notice of Application for an Order (i) directing the Monitor to distribute to Claimants who hold Allowed Claims determined as of the date of the Joint Application the amount of such Allowed Claims (the "**Proposed Distribution**"); and (ii) directing that certain costs payable by the 1974 Plan to the Steelworkers should be paid by the estate and fixed in the amount of \$75,000 (the "**Costs Order**").
2. Reference is made to the facts set out in the Notice of Application, the 13th Affidavit of William E. Aziz (the "**Thirteenth Aziz Affidavit**"), and the Twelfth Report of the Monitor, filed on August 11, 2017.

The Claims Process

3. As of May 24, 2017, Claims in the amount of approximately \$13.4 million have been determined to be Allowed Claims. In addition, a number of Claims have been filed that have not yet been resolved. The total amount of Allowed Claims and unresolved Claims (excluding the 1974 Plan's Claim) is approximately \$32 million.
4. Mr. James currently has an unresolved claim in the amount of \$6,747,203.00.
5. Based on the information in the Notice of Application, the 1974 Plan has committed to subordinate its claim to the Claims allowed as of the date of the Notice of Application. It is unclear whether the 1974 Plan will subordinate its claim to any of the unresolved claims.
6. The Notice of Application does not properly address the unresolved Claims or any known claims.
7. The Notice of Application does not resolve these issues. Rather, it proposes that all current Allowed Claims would be paid in full now, before the determination of the unresolved or unknown Claims. In addition, the 1974 Plan proposes to subordinate its claim in favour of only currently Allowed Claims and not in favour of unresolved or unknown Claims.
8. The process leading to the distribution to creditors must be fair to all stakeholders. The process proposed in the Notice of Application may not be fair to Mr. James who has an unresolved Claim.
9. Because the Petitioners have unresolved and unknown claims, the Petitioners do not know if they are in a position to pay all Allowed Claims in full. It is Mr. James' concern that if the Petitioners were to pay the current Allowed Claims in full, the Petitioners may not have sufficient funds to pay future claims that become Allowed Claims today to the detriment of Claimants who are found to hold Allowed Claims in the future. This result would be unfair to stakeholders and contrary to the objectives of the CCAA.

Part 5: LEGAL BASIS

The Proposed Distribution is Premature

- 1. The Proposed Distribution is inappropriate because the Petitioners have not identified the universe of potential Claims, and paying current Allowed Claims in full may give certain creditors an unfair preference at the expense of other stakeholders.
- 2. Mr. James supports and relies on the materials filed by the Petitioners.

Part 6: MATERIALS TO BE RELIED ON

- 1. The Affidavit of William E. Aziz, sworn August 11, 2017 and filed.
- 2. The Monitor's 12th Report, filed August 11, 2017.
- 3. The pleadings and proceedings filed in the CCAA proceedings.
- 4. 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.

[X] The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.

Date: August 14, 2017



 Signature of HEATHER L. JONES
 [x] counsel for Application Respondent

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

**APPLICATION RESPONSE of Kevin James to
NOTICE OF APPLICATION of 1974 PLAN and STEELWORKERS
set for hearing on August 15, 2017 at 9:00 a.m. before
MADAM JUSTICE KIRKPATRICK**

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