



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

PETITIONERS

APPLICATION RESPONSE

Application response of: Walter Energy Canada Holdings, Inc. and the other Petitioners listed on Schedule "A" (collectively with the partnerships listed on Schedule "A" hereto the "**application respondent**" or "**Walter Canada Group**")

THIS IS A RESPONSE TO the notice of application of United Mine Workers of America 1974 Pension Plan and Trust ("**1974 Plan**") dated December 2, 2016.

PART 1 ORDERS CONSENTED TO

The application respondent consents to the granting of none of the orders set out in Part 1 of the notice of application.

PART 2 ORDERS OPPOSED

The application respondent opposes the granting of all of the orders set out in Part 1 of the notice of application.

PART 3 ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of none of the orders set out in Part 1 of the notice of application.

PART 4 FACTUAL BASIS

1. This Application asks this court to dismiss Walter Canada Group's notice of application for a summary hearing (the "**Summary Hearing Notice of Application**") on the basis that there are contested facts rendering the issues unsuited to summary determination.

2. On October 26, 2016, the parties appeared before this Court pursuant to a direction made on August 16, 2016 to determine the procedural vehicle that would be used to determine the issues raised by the 1974 Plan's claim (the "**October Appearance**").
3. Pursuant to a consent case plan order entered on November 14, 2016 (the "**Case Plan Order**"), Walter Canada Group filed its Summary Hearing Notice of Application setting out four preliminary questions, each of which relates to whether or not *Employee Retirement Income Security Act of 1974, as amended*, 29 U.S.C. §§ 1001 *et seq.* ("**ERISA**") governs the 1974 Plan's claim against the Walter Canada Group.
4. If the Court decides any of the four questions in favour of Walter Canada Group, there is no need for any further exchange of evidence and the material costs associated with doing so can be avoided. If however, the Court decides all four questions set out in the Notice of Application in favour of the 1974 Plan, then it may be necessary to exchange additional evidence to determine the remaining factual disputes.
5. There are sufficient admitted and agreed facts for this Court to decide the four questions in favour of Walter Canada Group.
6. Furthermore, the parties have filed expert reports providing this Court with a sufficient evidentiary foundation to make findings of fact concerning the content of US law, if applicable. Neither expert indicated that further facts are required to complete that exercise.

PART 5 LEGAL BASIS

1. See the written submissions to be filed by the Walter Canada Group pursuant to the Case Plan Order on January 5, 2017 or, if agreed between counsel, on December 12, 2016.

PART 6 MATERIAL TO BE RELIED ON

1. All of the materials referenced in the Summary Hearing Application and subsequently filed by Walter Canada Group in respect of the Summary Hearing Application;
2. To the extent specifically identified by Walter Canada Group, the materials filed by 1974 Plan in respect of the Summary Hearing Application;
3. Any cross-examination of the parties' experts conducted during the Summary Hearing Application;
4. The pleadings and other materials filed in the within action; and
5. Such further materials as counsel may advise and the Court may admit.

The application respondent estimates that the application will take a half day and will be addressed in argument during the Summary Hearing scheduled for the week of January 9, 2017.

The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

December 9, 2016

Dated

A handwritten signature in black ink, consisting of several fluid, connected strokes, positioned above a horizontal line.

Signature of lawyer for application respondent

DLA Piper (Canada) LLP
(Mary I.A. Buttery and H. Lance Williams)

and

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

SCHEDULE "A"

Petitioners

1. Walter Canadian Coal ULC
2. Wolverine Coal ULC
3. Brule Coal ULC
4. Cambrian Energybuild Holdings ULC
5. Willow Creek Coal ULC
6. Pine Valley Coal, Ltd.
7. 0541237 B.C. Ltd.

Partnerships

1. Walter Canadian Coal Partnership
2. Wolverine Coal Partnership
3. Brule Coal Partnership
4. Willow Creek Coal Partnership

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LISTED ON SCHEDULE "A"

PETITIONERS

APPLICATION RESPONSE

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Client Matter No. 15375-00001

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