



This is the 8th affidavit of
Miriam Dominguez in this case
and was made on 30/December /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. 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

AFFIDAVIT

I, **MIRIAM DOMINGUEZ**, legal assistant, of 20th Floor – 250 Howe Street, in the City of Vancouver, in the Province of British Columbia, AFFIRM THAT:

1. I am a legal assistant at Dentons Canada LLP, Canadian solicitors for the United Mine Workers of America 1974 Pension Plan and Trust (the "**1974 Plan**"), a claimant in this proceeding, and as such I have personal knowledge of the facts and matters deposed to in this Affidavit except where I depose to a matter based on the information from an informant I identify, in which case, I believe that both the information from the informant and the resulting statement are true.

2. Attached and marked as **Exhibit "A"** is the list of documents of the United Mine Workers of America 1974 Pension Plan and Trust dated December 23, 2016.

3. Neither the Petitioners nor the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-424 have provided the 1974 Plan with a list of documents.

4. Attached and marked as **Exhibit "B"** is an email from Craig Dennis dated October 3, 2016.

5. Attached and marked as **Exhibit "C"** are the reasons for judgment of Madam Justice Fitzpatrick dated October 26, 2016.

AFFIRMED BEFORE ME at Vancouver, BC
on 30/December/2016.



A Commissioner for taking Affidavits within
British Columbia



MIRIAM DOMINGUEZ

ERIC J.S. AITKEN
Barrister & Solicitor
DENTONS CANADA LLP
20th Floor, 250 Howe Street
Vancouver, B.C. V6C 3R8
Telephone (604) 687-4460

**This is Exhibit "A" referred to in the affidavit
of Miriam Dominguez made before me at
Vancouver this 30th day of December, 2016.**

Y. H. H.

**A Commissioner for taking Affidavits
for British Columbia**

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

LIST OF DOCUMENTS

Prepared by: United Mine Workers of America 1974 Pension Plan and Trust (the "listing party" or the "1974 Plan")

Part 1: DOCUMENTS THAT ARE OR HAVE BEEN IN THE LISTING PARTY'S POSSESSION OR CONTROL AND THAT COULD BE USED BY ANY PARTY AT TRIAL TO PROVE OR DISPROVE A MATERIAL FACT

No.	Date of document	Description of document	Indicate by a check mark if the document is no longer in the listing party's possession or control	Indicate, for each document listed in this Part by way of an amendment to this List of Documents under Rule 7-1(9), (12) or (14), the date on which the document was listed
1.1	13/01/75	United Mine Workers of America 1974 Pension Trust Document	<input type="checkbox"/>	
1.2	27/09/10	2010 Actuarial Certification	<input type="checkbox"/>	

No.	Date of document	Description of document	Indicate by a check mark if the document is no longer in the listing party's possession or control	Indicate, for each document listed in this Part by way of an amendment to this List of Documents under Rule 7-1(9), (12) or (14), the date on which the document was listed
1.3	09/12/10	Letter from Dale Stover to Jim Walter Resources Inc. re: estimate of withdrawal liability	<input type="checkbox"/>	
1.4	01/07/11	National Bituminous Coal Wage Agreement of 2011		
1.5	27/09/11	United Mine Workers of America 1974 Pension Plan (July 1, 2011) Document		
1.6	31/12/12	United Mine Workers of America 1974 Pension Trust Document (2011)		
1.7	29/07/15	Jim Walter Resources Inc., Withdrawal Liability Worksheet		
1.8	28/09/15	2015 Actuarial Certification		
1.9	08/10/15	1974 Plan Proof of Claim filed against New WEI, Inc. (f/k/a Walter Energy, Inc.)		
1.10	08/10/15	1974 Plan Proof of Claim filed against New WEI 13, Inc. (f/k/a Jim Walter Resources, Inc.)		
1.11	08/10/15	1974 Plan Proof of Claim filed against Atlantic Development and Capital, LLC		
1.12	08/10/15	1974 Plan Proof of Claim filed against Atlantic Leaseco, LLC		
1.13	08/10/15	1974 Plan Proof of Claim filed against Blue Creek Coal Sales, Inc.		
1.14	08/10/15	1974 Plan Proof of Claim filed against Blue Creek Energy, Inc.		

No.	Date of document	Description of document	Indicate by a check mark if the document is no longer in the listing party's possession or control	Indicate, for each document listed in this Part by way of an amendment to this List of Documents under Rule 7-1(9), (12) or (14), the date on which the document was listed
1.15	08/10/15	1974 Plan Proof of Claim filed against New WEI 7, Inc. (f/k/a J.W. Walter, Inc.)		
1.16	08/10/15	1974 Plan Proof of Claim filed against Jefferson Warrior Railroad Company, Inc.		
1.17	08/10/15	1974 Plan Proof of Claim filed against New WEI 2, LLC (f/k/a Jim Walter Homes, LLC)		
1.18	08/10/15	1974 Plan Proof of Claim filed against Maple Coal Co., LLC		
1.19	08/10/15	1974 Plan Proof of Claim filed against Sloss-Sheffield Steel & Iron Company		
1.20	08/10/15	1974 Plan Proof of Claim filed against SP Machine, Inc.		
1.21	08/10/15	1974 Plan Proof of Claim filed against Taft Coal Sales & Associates, Inc.		
1.22	08/10/15	1974 Plan Proof of Claim filed against Tuscaloosa Resources, Inc.		
1.23	08/10/15	1974 Plan Proof of Claim filed against V Manufacturing Company		
1.24	08/10/15	1974 Plan Proof of Claim filed against New WEI 19, LLC (f/k/a Walter Black Warrior Basin LLC)		
1.25	08/10/15	1974 Plan Proof of Claim filed against New WEI 18, Inc. (f/k/a Walter Coke, Inc.)		
1.26	08/10/15	1974 Plan Proof of Claim filed against New WEI 22, LLC (f/k/a Walter Energy Holdings, LLC)		
1.27	08/10/15	1974 Plan Proof of Claim filed against New WEI 20, LLC (f/k/a Walter Exploration & Production LLC)		

No.	Date of document	Description of document	Indicate by a check mark if the document is no longer in the listing party's possession or control	Indicate, for each document listed in this Part by way of an amendment to this List of Documents under Rule 7-1(9), (12) or (14), the date on which the document was listed
1.28	08/10/15	1974 Plan Proof of Claim filed against New WEI 1, Inc. (f/k/a Walter Home Improvement, Inc.)		
1.29	08/10/15	1974 Plan Proof of Claim filed against New WEI 6 Company (f/k/a Walter Land Company)		
1.30	08/10/15	1974 Plan Proof of Claim filed against New WEI 16, Inc. (f/k/a Walter Minerals, Inc.)		
1.31	08/10/15	1974 Plan Proof of Claim filed against New WEI 21, LLC (f/k/a Walter Natural Gas, LLC)		
1.32	08/12/15	Jim Walter Resources Inc., Withdrawal Liability Worksheet		
1.33	09/12/15	Debtors' Motion for an Order Approving Global Settlement Among the Debtors, Official Committee of Unsecured Creditors, Steering Committee and Stalking Horse Purchaser Pursuant to Fed. R. Bankr. P. 9019		
1.34	22/12/15	Order Approving Global Settlement Among the Debtors, Official Committee of Unsecured Creditors, Steering Committee and Stalking Horse Purchaser Pursuant to Fed. R. Bankr. P. 9019		
1.35	17/03/16	Notice of Joint Motion for an Order (A) Authorizing Procedures to Implement the Global Settlement and (B) Granting Related Relief		

No.	Date of document	Description of document	Indicate by a check mark if the document is no longer in the listing party's possession or control	Indicate, for each document listed in this Part by way of an amendment to this List of Documents under Rule 7-1(9), (12) or (14), the date on which the document was listed
1.36	24/03/16	Order (A) Authorizing Procedures to Implement the Global Settlement and (B) Granting Related Relief		
1.37	28/03/16	Letter from Walter Energy Inc. to the President of the United Mine Workers of America rejecting the 2011 Collective Bargaining Agreement		
1.38	15/08/16	National Bituminous Coal Wage Agreement of 2016		
1.39	15/11/16	Pension Benefit Guaranty Corporation Annual Report 2016		

Part 2: OTHER DOCUMENTS TO WHICH THE LISTING PARTY INTENDS TO REFER AT TRIAL

No.	Date of document	Description of document	Indicate by a check mark if the document is no longer in the listing party's possession or control	Indicate, for each document listed in this Part by way of an amendment to this List of Documents under Rule 7-1(9), (12) or (14), the date on which the document was listed
2.1			<input type="checkbox"/>	

Part 3: DOCUMENTS THAT RELATE TO A MATTER IN QUESTION IN THE ACTION

No.	Date of document	Description of document	Indicate by a check mark if the document is no longer in the listing party's possession or control	Indicate, for each document listed in this Part by way of an amendment to this List of Documents under Rule 7-1(9), (12) or (14), the date on which the document was listed
3.1			<input type="checkbox"/>	

Part 4: DOCUMENTS FOR WHICH PRIVILEGE FROM PRODUCTION IS CLAIMED

No.	Date of document	Description of document	Grounds on which privilege is claimed	Indicate, for each document listed in this Part by way of an amendment to this List of Documents under Rule 7-1(9), (12) or (14), the date on which the document was listed
4.1	Various	Communications between the respondent and its solicitors, or between the respondent's solicitors.	A	
4.2	Various	Communications between the respondent's solicitors and third parties for the purpose of litigation.	B	

The grounds for claiming privilege for the documents are as follows:

A. The documents consist of professional communications of a confidential nature which passed between the respondent and its solicitors, or between the respondent's solicitors, for the purpose of the respondent obtaining legal advice and assistance, and memoranda or notes or other records made by the respondent of, or for the purpose of, such communications or of discussions with the respondent of such communications.

B. The documents consist of communications which passed between the respondent's solicitors and third persons, or documents obtained by the respondent's solicitors from third persons, for the dominant purpose of litigation or anticipated litigation so as to enable the respondent's solicitors to conduct or aid in the conduct of, or to provide the respondent with legal advice and assistance with respect to such litigation or anticipated litigation.

C. The documents consist of communications which passed between the respondent and third persons, or documents obtained by the respondent from third persons, for the dominant purpose of litigation or anticipated litigation so as to obtain information or advice to be submitted to the respondent's solicitors to enable the respondent's solicitors to conduct

or aid in the conduct of, or to provide the respondent with legal advice and assistance with respect to, such litigation or anticipated litigation, and memoranda or notes or other records made by the respondent of such communications or of discussions with the respondent of such communications.

D. The documents consist of communications which passed among the respondent or third persons, or their respective solicitors acting in their professional capacity, being persons having a common interest in, and for the dominant purpose of litigation or anticipated litigation, including the provision of legal advice and assistance with respect to such litigation or anticipated litigation, and memoranda or notes or other records made of such communications or of discussions of such communications.

E. The documents consist of without prejudice communications written for the purpose of, and passing in the course of, *bona fide* negotiations between the respondent, petitioner and/or their respective solicitors.

TAKE NOTICE that the documents listed in Parts 1, 2 and 3 of this List of Documents that are not shown as no longer being in the listing party's possession or control may be inspected and copied, during normal business hours, at Dentons Canada LLP, 20th Floor, 250 Howe Street, Vancouver, British Columbia, V6C 3R8.

Date: 23/Dec/2016

Implied undertaking to the court

Documents produced are not to be used by the other party(ies) except for the purposes of this litigation unless and until the scope of the undertaking is varied by a court order or other judicial order, consent or statutory override or a situation of immediate and serious danger emerges. This implied undertaking continues despite settlement or completion of the litigation.



Signature of Craig P. Dennis, Q.C.

Canadian counsel for United Mine
Workers of America 1974 Pension Plan
and Trust Lawyer for listing party

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.
8. New Walter Energy Canada Holdings, Inc.
9. New Walter Canadian Coal Corp.
10. New Wolverine Coal Corp.
11. New Brule Coal Corp.
12. New Willow Creek Coal Corp.

Partnerships

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

**This is Exhibit "B" referred to in the affidavit
of Miriam Dominguez made before me at
Vancouver this 30th day of December, 2016.**



**A Commissioner for taking Affidavits
for British Columbia**

From: Dennis, Craig
Sent: 3-Oct-16 10:29 AM
To: Peter Reardon; Sandrelli, John; Buttery, Mary; Wasserman, Marc; Riesterer, Patrick; Paterson, Mary; Williams, Lance; baziz@bluetreeadvisors.com; Jeffries, Tevia; Caitlin Fell; Wael Rostom; Anthony Tillman; pjreynolds@kpmg.ca
Subject: RE: Scheduling for 1974 Plan Claim

Mary et al,

We have taken a further look at the pleadings and in particular the Response to Civil Claim filed by the petitioners on September 23, 2016. The number and nature of the facts contested indicate the need for some discovery in advance of a summary trial. To expedite discovery, we are willing to consider a streamlined process for document discovery involving targeted discovery requests. Document discovery would be governed otherwise by Rule 7-1.

We have prepared an initial list of discovery requests, based on the facts put in issue by the pleadings. In order to advance our discussions around scheduling and timelines, are you able to advise how soon the petitioners could produce documents responsive to the following list of subjects:

- 1) Managerial decision-making by the Petitioners, including without limitation the provision of managerial and administrative services by WE or other affiliated U.S. entities (hereafter, collectively "WE"), after the date of the Western Acquisition;
- 2) Board minutes of the Petitioners, where applicable, after the date of the Western Acquisition;
- 3) Authorizations or protocols established by WE for the Petitioners with respect to the conduct of the business including without limitation strategic or investment decisions and the expenditure of funds;
- 4) The movement of funds between WE and the Petitioners as of and after the date of the Western Acquisition;
- 5) Actions taken by WE to support the business of the Petitioners;
- 6) The financial position of WE from and after the date of the Western Acquisition;
- 7) The withdrawal liability of WE; and
- 8) Corporate relationship between the Petitioners and WE, including without limitation shareholdings from and after the date of the Western Acquisition?

Any sense of timing that you may be able to provide in advance of tomorrow's call would be very helpful. Thanks.



Craig P. Dennis, Q.C.
Partner

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Bio | Website

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20th Floor, 250 Howe Street Vancouver, BC V6C 3R8 Canada

大成 Salans FMC SNR Denton McKenna Long

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onner et recevoir des communications électroniques de notre part, ou pour vous désabonner et ne plus recevoir de telles communications, veuillez visiter le [centre d'abonnement en ligne de McMillan](#).

**This is Exhibit "C" referred to in the affidavit
of Miriam Dominguez made before me at
Vancouver this 30th day of December, 2016.**



**A Commissioner for taking Affidavits
for British Columbia**

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20161026
Docket: S1510120
Registry: Vancouver

**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"**

Before: The Honourable Madam Justice Fitzpatrick

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners:	M.I.A. Buttery P. Riesterer M. Paterson
Counsel for United Mine Workers of America 1974 Pension Plan and Trust:	C. Dennis, Q.C. J.R. Sandrelli
Counsel for the United States Steel Workers, Local 1-424:	C.D. Bavis
Counsel for KPMG Inc., Monitor:	P.J. Reardon
Place and Date of Trial/Hearing:	Vancouver, B.C. October 26, 2016
Place and Date of Judgment:	Vancouver, B.C. October 26, 2016

[1] **THE COURT:** The Monitor has brought this application for directions concerning the procedure for the adjudication of the claim advanced against the petitioners ("Walter Energy") by UMWA 1974 Pension Plan (the "1974 Plan"). In support, the Monitor has filed its Fifth Report dated October 20, 2016.

[2] This further application was anticipated given the Claims Process Order which I granted on August 16, 2016. In accordance with that Order, the parties have filed pleadings. In addition, as discussed in my earlier reasons (*Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 1746 at paras. 86, 87), a specific process was intended to address this claim given its uniqueness.

[3] Unfortunately, Walter Energy (supported by the United States Steel Workers, Local 1-424 (the "Union")) and the 1974 Plan have been unable to reach an agreement on further procedures to be completed towards adjudicating the claim. All parties seem content to decide the issue by way of summary trial. However, the 1974 Plan seeks a level of discovery that Walter Energy says is unnecessary for the purposes of deciding certain issues which it says are determinative of the matter.

[4] Ultimately, it is up to one side or the other to bring forward what they think is a viable application. What Walter Energy is proposing is a summary trial on a discrete issue that it says will avoid what it describes as the extensive discovery sought by the 1974 Plan. It proposes proceeding on this "threshold" issue relating to whether the U.S. law relied upon by the 1974 Plan even applies to Walter Energy. In addition, Walter Energy states that the discovery sought will be difficult, if not impossible, to obtain and no doubt expensive and time-consuming to the extent that it is possible.

[5] We are all, of course, aware of the principles relating to summary trials, including the court's often concern about litigating in slices. Other issues arise in relation to whether the court can find the facts necessary to decide the issues of fact or law or whether it is unjust to decide the issues on such an application (Supreme Court Civil Rule 9-7(15)).

[6] Even so, it is ultimately up to a party to decide to bring an application or not. Of course, the opposing party is open to say that the matter is not appropriate for summary trial for various reasons, including the lack of relevant discovery, such as is being suggested here by the 1974 Plan. That position will not usually prevent a party from bringing an application; however, it remains the case that if these objections are found to be warranted, that summary trial application may not succeed.

[7] Proceeding to a determination of the issues, as proposed by Walter Energy and without agreement, poses some risk. Even so, I am simply not in a position to say who is right and who is wrong in terms of what level of discovery is warranted for the purpose of deciding this "threshold" issue or even whether a summary trial on this issue is appropriate. This is obviously a complicated matter, and counsel are, of course, more familiar with the issues and the relevant facts and law than the Court.

[8] Having said that, I am inclined to let Walter Energy, with the support of the Union, bring the matter forward if they think they can convince the Court that it is appropriate to determine these issues at summary trial in these circumstances. I am not in any position at this time to refuse to hear Walter Energy's application and order the extensive discovery sought by the 1974 Plan. I expect that the parties will continue to discuss the matter and perhaps reach some level of agreement as matters progress. Needless to say, if there is evidence, documentary or otherwise, available to the 1974 Plan other than from Walter Energy, then that can be pursued as the 1974 Plan deems appropriate or necessary.

[9] At the return of the application, the 1974 Plan may still take the position that the application is not appropriate and advance arguments to that effect. If so, Walter Energy and the Union still run the risk that the Court may agree with the 1974 Plan that it cannot or will not decide the issue by summary trial without the sought after disclosure (or perhaps other issues). If that occurs, the parties are not one month, but three to four months behind, in delaying a determination of the issues and hence exacerbating the delay faced by the creditors in terms of a distribution.

[10] In conclusion, I am prepared to allow Walter Energy's proposed application to go forward. I will require that the parties negotiate and agree upon a case plan order, to establish reasonable deadlines for the steps to be completed before the hearing. The hearing has been tentatively scheduled for the week commencing January 9, 2017.

"Fitzpatrick J."