



This is the 5th affidavit of
Miriam Domínguez in this case
and was made on 28/November /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 WALTER ENERGY CANADA HOLDINGS, INC., AND THE OTHER
PETITIONERS LISTED ON SCHEDULE "A" TO THE INITIAL ORDER

PETITIONERS

AFFIDAVIT

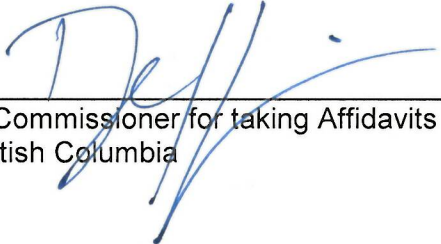
I, MIRIAM DOMINGUEZ, legal assistant, of 20th Floor – 250 Howe Street, in the City of Vancouver, in the Province of British Columbia, AFFIRM THAT:

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. I make this affidavit in support of our Notice of Application dated November 24, 2016 and in reply to the Affidavit filed by Sue Danielisz sworn November 27, 2016.

3. Attached hereto and marked as **Exhibit "A"** is a copy of a string of emails between counsel for Monitor, counsel for the Petitioners and Canadian counsel for the 1974 Plan.

AFFIRMED BEFORE ME at Vancouver, BC,
on 28 / November / 2016.



A Commissioner for taking Affidavits within
British Columbia



MIRIAM DOMINGUEZ

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

Jeffries, Tevia

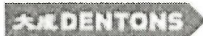
From: Dennis, Craig <craig.dennis@dentons.com>
Sent: 25-Oct-16 4:08 PM
To: Buttery, Mary; Sandrelli, John
Cc: Paterson, Mary; Peter Reardon; Wael Rostom; Caitlin Fell; Wasserman, Marc
Subject: RE: Walter - MEPP Claim Litigation Plan

We thought it would be useful to circle back in advance of tomorrow morning's case management conference.

We each came away from our call on October 18 with some additional things to think about. Please let us know if there is anything additional you wish us to consider before tomorrow.

We know you have looked at an alternative to a summary trial. In particular, you have asked whether there may be one or more discrete points of law which can be determined without deciding disputed questions of fact and the determination of which would advance the litigation. Let us know if you have any further candidates in that regard for us to consider. As we discussed during our October 18 call, we do not see the list of questions in your October 14 email as falling within those terms.

We continue to support summary trial, preceded (as is customary) by discovery. We note that summary trial is the potential manner of disposition referred to in Madam Justice Fitzpatrick's September 23, 2016 reasons for judgment. As set out in our email of October 3, we are open to trying to expedite the process further by employing a targeted pre-trial discovery directed to the discrete subjects identified in our email.




Craig P. Dennis, Q.C.
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This is Exhibit " A " referred to in the affidavit of Miniam Dominguez sworn before me at Vancouver this 28 day of November, 2016

A Commissioner for taking Affidavits for British Columbia

From: Buttery, Mary [mailto:mary.buttery@dlapiper.com]
Sent: 18-Oct-16 11:38 AM
To: Dennis, Craig; Sandrelli, John
Cc: Paterson, Mary; Peter Reardon; Wael Rostom; Caitlin Fell; Wasserman, Marc
Subject: RE: Walter - MEPP Claim Litigation Plan

Yes, that works Craig. Please use the following call in

Mary

DLA Piper (Canada) Conference Centre North American Dial-In Number:
866-214-9607

DLA Piper (Canada) Conference Centre International Dial-In Number:
+1-647-427-7523

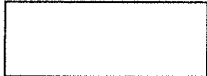
Conference code # is 2299391556

Mary Buttery
Partner

T 604.643.6478
F 604.605.3768
E mary.buttery@dlapiper.com

From: Dennis, Craig [<mailto:craig.dennis@dentons.com>]
Sent: October-18-2016 11:25 AM
To: Buttery, Mary; Sandrelli, John
Cc: Paterson, Mary; Peter Reardon; Wael Rostom; Caitlin Fell; Wasserman, Marc
Subject: RE: Walter - MEPP Claim Litigation Plan

Can we start at 4? I'm available but only until 4:30. If we can do it in 15 minutes great. But it may be better to have a little more time available to us.



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From: Buttery, Mary [<mailto:mary.buttery@dlapiper.com>]
Sent: 18-Oct-16 10:42 AM
To: Dennis, Craig; Sandrelli, John
Cc: Paterson, Mary; Peter Reardon; Wael Rostom; Caitlin Fell; Wasserman, Marc
Subject: RE: Walter - MEPP Claim Litigation Plan

Thanks Craig.
Probably it's the most efficient if we just get on a call.
We are all free at 4:15 today. Does that work for you?

Mary

Mary Buttery

Partner

T 604.643.6478

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E mary.buttery@dlapiper.com

From: Dennis, Craig [<mailto:craig.dennis@dentons.com>]**Sent:** October-17-2016 12:21 PM**To:** Buttery, Mary; Sandrelli, John**Cc:** Paterson, Mary; Peter Reardon; Wael Rostom; Caitlin Fell; Wasserman, Marc**Subject:** RE: Walter - MEPP Claim Litigation Plan

Mary, thanks again for your email Friday, which we have considered. There are a couple of questions which come to mind, on which we thought it might be productive to invite clarification from you. While bearing in mind the court's concern about "litigating in slices", we have not formed a view against bifurcation. We take Peter's point that the court likely will try to work with us if we can agree on a procedure that makes sense in the circumstances and is fair to all concerned.

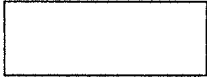
The two primary questions we have are as follows:

- Are all of the questions of law you listed questions of law alone? My impression on an initial read-through is that the answer to (a) depends on facts, and so it is a question of mixed fact and law, and (b), if it arises at all, is, from the standpoint of B.C., a question of fact alone.
- Is it possible to proceed on questions of law in circumstances which contemplate evidence and an agreed statement of facts? Added to that is that we don't know yet what facts, if any, we will reach agreement on or, therefore, where it would leave us if there are necessary facts which remain contested.

We do of course appreciate that in a CCAA matter, the Court has a fair amount of discretion in settling on the process for determination of claims. That said, there is usually some grounding in the Rules, the Court recognizing, amongst other reasons including fairness, that in significant disputes like this one an appeal is likely. The procedural rule that appears nearest to what you propose is Rule 9-4, proceedings on a point of law. Allowing that the court may give us a little latitude on procedure, there is still value in situating any procedure we consider within what we already are familiar with (*i.e.*, the *Supreme Court Civil Rules*). I was reviewing the principles applicable to Rule 9-4 as set out in *Alcan Smelters & Chemicals Ltd. v. Can. Assoc. of Smelters & Allied Workers, Local 1* (1977), 3 B.C.L.R. 161 at 165 (S.C.). My point for the moment is less about whether, strictly speaking, we meet the conditions listed in *Alcan* and more about whether, if we don't, that may suggest something about the efficacy of trying to proceed on that basis. Among the points stated in *Alcan* are:

1. The point of law to be decided must be raised and clearly defined in the pleadings...;
2. The rule is appropriate only to cases where, assuming allegations in a pleading of an opposite party are true, a question arises as to whether such allegations raise and support a claim or a defence in law...;
3. The facts relating to the point of law must not be in dispute and the point of law must be capable of being resolved without hearing evidence... .

I invite comments, and if it would be helpful to speak again then we're available to do so. Thanks.



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From: Buttery, Mary [<mailto:mary.buttery@dlapiper.com>]
Sent: 14-Oct-16 10:25 AM
To: Dennis, Craig; Sandrelli, John
Cc: Paterson, Mary; Peter Reardon; Wael Rostom; Caitlin Fell; Wasserman, Marc
Subject: FW: Walter - MEPP Claim Litigation Plan

Craig,

Further to our discussions and your proposals set out in your email of October 4, we have considered the various options and propose a bifurcated proceeding along the following lines:

1. *Stage 1:* Final determination of questions of law raised by 1974 Plan’s Notice of Claim (Hearing, week of January 9). The questions of law to be decided in Stage 1 are:
 - a. Under Canadian conflict of laws rules, is 1974 Plan’s claim against the Walter Petitioners governed by Canadian substantive law or U.S. substantive law (including ERISA)?
 - b. If the 1974 Plan’s claim against the Walter Petitioners is governed by U.S. substantive law (including ERISA), as a matter of U.S. law does ERISA apply to corporations existing solely outside the territorial United States of America?
 - c. If the 1974 Plan’s claim against the Walter Petitioners is governed by U.S. substantive law (including ERISA) and ERISA applies to corporations existing solely outside the territorial United States of America, is that law unenforceable by Canadian courts as a penal, revenue or other public law of the United States?
 - d. If the 1974 Plan’s claim against the Walter Petitioners is governed by U.S. substantive law (including ERISA) and ERISA applies to corporations existing solely outside the territorial United States of America, is that law unenforceable by Canadian courts because it conflicts with Canadian public policy?
2. *Stage 2:* If the Court determines the questions of law in favour of the 1974 Plan, then the parties will exchange additional evidence to support a final determination of the factual questions raised by the 1974 Plan’s Notice of Claim on a date to be set.

In Stage 1, the following timetable would ensure that the parties are able to complete the hearing in the week of January 9:

- By Oct. 18, the parties agree on the contents of a Joint Book of Evidence containing documents such as affidavits previously filed with the Court, Monitor's reports previously filed with the Court, other judicial documents (pleadings, the judgment obtained by the 1974 Plan in the US etc.).
- By Oct. 21, the parties will agree on an agreed statement of facts to be included in the Joint Book of Evidence. The Walter Petitioners will file the Joint Book of Evidence with the Court by Oct. 28.
- By Oct. 28, the parties will exchange expert reports on question of law b, as required.
- By Nov. 18, the parties will exchange reply expert reports on question of law b, as required.
- By Dec. 2, 1974 Plan will submit its written submissions (30 page limit).
- By Dec. 16, Walter Canada will submit its written submissions (35 page limit).
- By Dec. 23, 1974 Plan will submit any reply submissions (5 page limit).
- Week of January 9: legal argument before Fitzpatrick J.

In Stage 2, if it is necessary, the parties will agree to a timetable that contemplates the following:

- Identification of the questions of fact to be resolved.
- Discussion of any additional facts that can be agreed beyond the agreed statement of facts from Stage 1.
- Document requests and exchanges of documents.
- Exchange of affidavit evidence specifically related to disputed facts.
- Cross-examinations.
- Argument.

Thanks,

Mary

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