



This is the 1st Affidavit of Susan Danielisz in this case and was made on November 27, 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 A PLAN OF COMPROMISE OR ARRANGEMENT OF
WALTER ENERGY CANADA HOLDINGS, INC. AND THE OTHER
PETITIONERS LISTED ON SCHEDULE "A"

PETITIONERS

A F F I D A V I T

I, **Susan Danielisz**, legal assistant, of 2800 Park Place, 666 Burrard Street, in the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a legal assistant with DLA Piper (Canada) LLP, the British Columbia counsel for the Petitioners herein, and as such have personal knowledge of the facts hereinafter deposed to, except where such facts are stated to be based upon information and belief and where so stated I do verily believe the same to be true.

2. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a true copy of an email dated October 14, 2016 from Mary Buttery of DLA Piper (Canada) LLP, the British Columbia counsel for the Petitioners herein, to Craig Dennis and John Sandrelli of Dentons Canada LLP, Canadian counsel for United Mine Workers of America 1974 Pension Plan.

SWORN BEFORE ME at Vancouver, British Columbia, on this 27th day of November, 2016.

A Commissioner for taking Affidavits for British Columbia.
H. LANCE WILLIAMS
Barrister and Solicitor
DLA Piper (Canada) LLP
666 Burrard Street, Suite 2800
Vancouver, BC V6C 2Z7
604.687.9444
lance.williams@dlapiper.com

CAN: 23238312.1

SUSAN DANIELISZ

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

This is **Exhibit "A"** referred to in Affidavit #1 of **Susan Danielisz**, sworn before me at Vancouver, British Columbia, on November 27, 2016.



A Commissioner for taking Affidavits
for British Columbia

From: "Buttery, Mary"
Sent: October-14-2016 9:25 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

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

PETITIONERS

AFFIDAVIT #1 OF SUSAN DANIELISZ

DLA Piper (Canada) LLP
Barristers & Solicitors
2800 Park Place
666 Burrard Street
Vancouver, BC V6C 2Z7

Tel. No. 604.687.9444
Fax No. 604.687.1612

Client Matter No. 15375-00001

LZW/sd