



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

NOTICE OF APPLICATION

Names of applicants: Walter Energy Canada Holdings, Inc. and the other Petitioners listed on **Schedule "A"** (collectively with the partnerships listed on Schedule "A" hereto, the "**Walter Canada Group**")

To: Service List attached hereto as **Schedule "B"**

TAKE NOTICE that an application will be made by the Walter Canada Group to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on **January 9, 2017** at 10:00 a.m. for the order set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. Under the Canadian conflict of laws rules, the claim of the United Mine Workers of America 1974 Pension Plan and Trust (the "**1974 Plan**") against the Walter Canada Group is governed by Canadian substantive law.
2. In the alternative, if the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including The Employee Retirement Income Security Act of 1974 (ERISA) (Pub.L. 93-406, 88 Stat. 829, enacted September 2, 1974, codified in part at 29 U.S.C. ch. 18 ("**ERISA**")), as a matter of United States law controlled group liability for withdrawal liability related to a multi-employer pension plan under ERISA does not extend extraterritorially.
3. In the further alternative, if the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA), and ERISA applies extraterritorially, that law is unenforceable by Canadian courts as a penal, revenue or other public law of the United States.
4. In the further alternative, if the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA) and ERISA applies extraterritorially, that law is unenforceable by Canadian courts because it conflicts with Canadian public policies.

Part 2: FACTUAL BASIS

1. This Notice of Application is delivered in accordance with the case plan order made in these proceedings and awaiting entry (the "**Case Plan Order**"), which also governs the timelines for *inter alia*, responses.

Introduction

2. On December 7, 2015 the Walter Canada Group were granted protection pursuant to section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), which proceedings have been extended from time to time (the "**CCAA Proceedings**").
3. As part of the CCAA Proceedings, and pursuant to a Claims Process Order pronounced herein on August 16, 2016, the 1974 Plan delivered to the Service List a Notice of Civil Claim seeking allowance of its claim in the amount of US\$904,367,132.
4. On September 23, 2016 the Walter Canada Group filed a Response to Civil Claim, opposing relief sought by the 1974 Plan.
5. On September 26, 2016 the USW filed a Response to Civil Claim, opposing relief sought by the 1974 Plan, and asserting that if the 1974 Plan Claim was to be allowed, that it be in a separate class from the USW Employee Claimants, and would only receive a distribution after the claims of the USW Employee Claimants were paid in full.
6. On September 26, 2016, the Monitor filed a Response to Civil Claim, stating that it was taking no position with respect to the adjudication of the 1974 Plan Claim, instead offering any assistance to the Court that the Court may require.
7. On October 5, 2016 the 1974 Plan filed a Reply to the Response to Civil Claim of the USW.
8. On November 9, 2016 the 1974 Plan delivered to the Service List an Amended Notice of Civil Claim, alleging additional facts in support of its claim.
9. On November 10, 2016 the Walter Canada Group delivered to the Service List an Amended Response to Civil Claim. The facts set out herein are in addition to those set out in the Walter Canada Group's Amended Response to Civil Claim.
10. On November 11, 2016 the USW delivered to the Service List an Amended Response to Civil Claim.
11. The Petitioners state it is appropriate that certain preliminary issues be determined by way of summary proceeding.

The issues that can be determined in a summary fashion are as follows:

- a. Under Canadian conflict of laws rules, is the 1974 Plan's claim against the Walter Canada Group governed by Canadian substantive law or United States substantive law (including ERISA)?
- b. If the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA), as a matter of United States law does controlled group liability for withdrawal liability related to a multi-employer pension plan under ERISA extend extraterritorially?
- c. If the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA), and ERISA applies extraterritorially, 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 Canada Group is governed by United States substantive law (including ERISA) and ERISA applies extraterritorially, is that law unenforceable by Canadian courts because it conflicts with Canadian public policy?

Part 3: LEGAL BASIS

1. The Walter Canada Group relies on the legal basis set out in Walter Canada Group's Amended Response to Civil Claim as will be fully articulated in the written argument to be delivered pursuant to the terms of the Case Plan Order.
2. Under the Canadian conflict of laws rules, the claim of the 1974 Plan against the Walter Canada Group is governed by Canadian substantive law.
3. In the alternative, if the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA), as a matter of United States law controlled group liability for withdrawal liability related to a multi-employer pension plan under ERISA does not extend extraterritorially.
4. In the further alternative, if the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA), and ERISA applies extraterritorially, that law is unenforceable by Canadian courts as a penal, revenue or other public law of the United States.
5. In the further alternative, if the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including ERISA) and ERISA applies extraterritorially, that law is unenforceable by Canadian courts because it conflicts with Canadian public policies.
6. The Walter Canada Group further relies upon:
 - (a) *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
 - (b) *Supreme Court Civil Rules*, B.C. Reg. 241/2010, as amended;
 - (c) the inherent and equitable jurisdiction of this Honourable Court; and
 - (d) such further and other grounds as counsel may advise and this Honourable Court may deem just.

Part 4: MATERIAL TO BE RELIED ON

1. Walter Canada Group's Book of Evidence to be delivered in accordance with the Case Plan Order, including the Expert Report to be delivered in accordance with the Case Plan Order;
2. pleadings and other materials filed herein; and
3. such further and other materials as counsel may advise and this Honourable Court may permit.

The applicants estimate that the application will take 5 days.

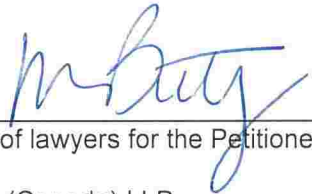
This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master. The Honourable Madam Justice Fitzpatrick is seized of these proceedings and the hearing of this application has been arranged in consultation with Madam Justice Fitzpatrick and Trial Scheduling.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding; and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

November 14, 2016
Dated _____



Signature of lawyers for the Petitioners

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

and

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

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of Judge Master

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

SCHEDULE "B"

SERVICE LIST

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NO. S-1510120
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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NOTICE OF APPLICATION

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File No. 15375-00001

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