

Court of Appeal File No. CA 44448
Supreme Court File No. S1510120
Supreme Court Registry Vancouver

VANCOUVER

MAY 19 2017

COURT OF APPEAL
REGISTRY

COURT OF APPEAL

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 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
(RESPONDENTS)

AND:

UNITED MINE WORKERS OF AMERICA 1974 PENSION PLAN AND TRUST

APPELLANT

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

Take notice that United Mine Workers of America 1974 Pension Plan and Trust (the "**Appellant**") hereby applies for leave to appeal to the Court of Appeal for British Columbia from the Order for Judgment of the Honourable Madam Justice Fitzpatrick of the Supreme Court of British Columbia pronounced the 1st day of May, 2017, at Vancouver, British Columbia (the "**Order**") granting the Respondents' application to declare that under Canadian conflict of laws rules, the Appellant's claim as against the Respondents (together, the "**Walter Canada Group**") is governed by Canadian substantive law and not U.S. substantive law, including the *Employee Retirement Income Security Act of 1974*, as amended ("**ERISA**"), 29 U.S.C. §§ 1001 *et seq.*

- (2) the learned chambers judge erred in law in making an order as to costs in the CCAA Proceedings when no respondent sought costs in their filed responses to the notice of civil claim, costs were not sought in the notice of application, and no submissions were made orally or in writing seeking or about costs.

The hearing of this proceeding occupied 9 days.

Dated at Vancouver, British Columbia, this 19th day of May, 2017.



Craig P. Dennis, Q.C.
Solicitor for the Appellant

To the respondent:	Walter Canada Group
And to its solicitor:	Marc Wasserman, Mary Paterson and Patrick Riesterer Osler, Hoskin & Harcourt LLP
To the respondent:	The Monitor KPMG Inc. Philip J. Reynolds, Jordan Sleeth, and Mike Schwartzentruber
And to its solicitor:	Wael Rostom, Peter Reardon, and Caitlin Fell McMillan LLP
To the respondent:	United Steelworkers, Local 1-424
And to its solicitor:	Craig Bavis Victory Square Law Office
To the service list:	See attached Schedule "A"
This Notice of Leave to Appeal is given by	Dentons Canada LLP
whose address for service is:	20 th Floor, 250 Howe Street Vancouver, BC V6C 3R8 Fax: 604-683-5214

To the respondent(s):

IF YOU INTEND TO PARTICIPATE in this proceeding, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Notice of Appearance" (Form 2 of the Court of Appeal Rules) in a Court of Appeal registry and serve the notice of appearance on the appellant WITHIN 10 DAYS of receiving this Notice of Application for Leave to Appeal.

IF YOU FAIL TO FILE A NOTICE OF APPEARANCE

- (a) you are deemed to take no position on the application, and
- (b) the parties are not obliged to serve you with any further documents related to the application.

The filing registries for the British Columbia Court of Appeal are as follows:

Central Registry:

B.C. Court of Appeal
Suite 400, 800 Hornby Street
Vancouver BC V6Z 2C5

Other Registries:

B.C. Court of Appeal
The Law Courts
P.O. Box 9248 STN PROV GOVT
850 Burdett Ave
Victoria BC V8W 1B4

B.C. Court of Appeal
223 – 455 Columbia Street
Kamloops BC V2C 6K4

Inquiries should be addressed to (604) 660-2468 Fax filings: (604) 660-1951

SCHEDULE "A"

SERVICE LIST

<p>Osler, Hoskin & Harcourt LLP Box 50, 1 First Canadian Place Toronto, Ontario, Canada M5X 1B8</p> <p>Marc Wasserman Email: mwasserman@osler.com Tel: 416-862-4908</p> <p>Mary Paterson Email: mpaterson@osler.com Tel: (416) 862-4924</p> <p>Emmanuel Pressman Email: epressman@osler.com</p> <p>Patrick Riesterer Email: priesterer@osler.com</p>	<p>Counsel for the Petitioners</p>
<p>Longview Communications Inc. Suite 612 – 25 York Street Toronto, ON Canada M5J 2V5</p> <p>Joel Shaffer Email: jshaffer@longviewcomms.ca</p> <p>Suite 2028 – 1055 West Georgia Vancouver, BC Canada V6E 3P3</p> <p>Alan Bayless Email: abayless@longviewcomms.ca</p> <p>Robin Fraser Email: rfraser@longviewcomms.ca</p>	<p>Communications Advisor to the Petitioners</p>
<p>KPMG Inc. 333 Bay Street, Suite 4600 Toronto, ON M5H 2S5</p> <p>Philip J. Reynolds Email: pjreynolds@kpmg.ca</p> <p>Jorden Sleeth</p>	<p>Monitor</p>

<p>Email: jsleeth@kpmg.ca</p> <p>Mike Schwartzenruber Email: mikes@kpmg.ca</p> <p>KPMG Inc. PO Box 10426 777 Dunsmuir Street Vancouver, BC V7Y 1K3 Canada</p> <p>Anthony Tillman Email: atillman@kpmg.ca</p> <p>Mark Kemp-Gee Email: m Kempgee@kpmg.ca</p>	
<p>McMillan LLP Royal Centre, 1055 West Georgia Street Suite 1500, PO Box 11117</p> <p>Wael Rostom Email: wael.rostom@mcmillan.ca Tel. 416-865-7790</p> <p>Peter Reardon Email: peter.reardon@mcmillan.ca</p> <p>Caitlin Fell Email: caitlin.fell@mcmillan.ca</p> <p>Copy to: Lori Viner Email: lori.viner@mcmillan.ca</p>	<p>Counsel to KPMG Inc.</p>
<p>Walter Energy, Inc. 3000 Riverchase Galleria Birmingham, AL 35244</p>	<p>Parent company of the Petitioners</p>
<p>Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, New York 10019 Fax: 212-757-3990 Tel: 212-373-3000</p> <p>Stephen Shimshak,</p>	<p>Counsel to Walter Energy, Inc.</p>

<p>Email: sshimshak@paulweiss.com</p> <p>Kelly Cornish, Email: kcornish@paulweiss.com</p> <p>Claudia Tobler Email: ctobler@paulweiss.com</p> <p>Daniel Youngblut Email: dyoungblut@paulweiss.com</p> <p>Michael Rudnick Email: mrudnick@paulweiss.com</p>	
<p>White & Case LLP 1155 Avenue of the Americas New York, New York 10036-2787 Fax: 212.819.8200 Tel: 212.819.8567</p> <p>Scott Greissman Email: sgreissman@whitecase.com</p> <p>Elizabeth Feld Email: efeld@whitecase.com</p>	<p>US Counsel to Morgan Stanley Senior Funding, Inc., as Administrative Agent and Collateral Agent under the First Lien Credit Facility</p>
<p>Stikeman Elliott LLP 199 Bay Street, Suite 4900 Toronto, Ontario M5L 1B9</p> <p>Tel: 416-869-6820 Fax: 416-947-9477</p> <p>Kathryn Esaw Email: kesaw@stikeman.com</p>	<p>Canadian Counsel to Morgan Stanley Senior Funding, Inc., as Administrative Agent and Collateral Agent under the First Lien Credit Facility</p>
<p>Akin Gump Strauss Hauer & Feld LLP One Bryant Park Bank of America Tower New York, New York 10036-6745 Fax: 212-872-1002 Tel: 212-872-8076</p> <p>Ira Dizengoff, Email: idizengoff@akingump.com</p> <p>Lisa G. Beckerman, Email: lbeckerman@akingump.com</p>	<p>U.S. Counsel to the Steering Committee of First Lien Creditors of Walter Energy, Inc.</p>

<p>Maurice L. Brimmage Email: mbrimmage@akingump.com</p> <p>James Savin Email: jsavin@akingump.com</p>	
<p>Cassels Brock & Blackwell LLP 2200 HSBC Building, 885 West Georgia Street, Vancouver, BC, V6C 3E8 Fax: 604 691 6120 Tel: 604 691 6121</p> <p>Steven Dvorak Email: sdvorak@casselsbrock.com</p> <p>Ryan Jacobs Email: rjacobs@casselsbrock.com</p> <p>Natalie Levine Email: nlevine@casselsbrock.com</p> <p>Matthew Nied Email : mnied@casselsbrock.com</p>	<p>Canadian Counsel to the Steering Committee of First Lien Creditors of Walter Energy, Inc.</p>
<p>Victory Square Law Office 710 – 777 Hornby Street Vancouver, BC V6Z 1S4</p> <p>Craig Bavis Email: cbavis@vslo.bc.ca Tel: 604-684-8421 Fax : 604-684-8427</p> <p>Jeff Sanders Email: j.sanders@vslo.bc.ca</p>	<p>Canadian Counsel to the United Steelworkers, Local 1-424</p>
<p>Dentons Canada LLP 20th Floor, 250 Howe Street Vancouver, BC Canada V6C 3R8</p> <p>John R. Sandrelli Email: john.sandrelli@dentons.com Tel : 604-443-7132</p> <p>Craig Dennis</p>	<p>Canadian Counsel to the United Mine Workers of America 1974 Pension Plan and Trust</p>

<p>Email : craig.dennis@dentons.com Tel : 604-648-6507</p> <p>Tevia Jeffries Email: tevia.jeffries@dentons.com</p> <p>Miriam Dominguez Email: miriam.dominguez@dentons.com</p>	
<p>Morgan Lewis & Bockius LLP One Federal St. Boston, MA 02110-1726 United States Julia Frost-Davies Email: julia.frost-davies@morganlewis.com</p> <p>Morgan Lewis & Bockius LLP 1701 Market St. Philadelphia, PA19103-2921 United States</p> <p>John C. Goodchild, III Email: john.goodchild@morganlewis.com</p> <p>Rachel Jaffe Mauceri Email: rmauceri@morganlewis.com</p>	<p>US Counsel to the United Mine Workers of America 1974 Pension Plan and Trust</p>
<p>Mooney, Green, Saindon, Murphy & Welch, P.C. 1920 L Street, NW, Suite 400 Washington, DC 20036</p> <p>Paul Green Email: pgreen@mooneygreen.com</p> <p>John Mooney Email: jmooney@mooneygreen.com</p>	<p>US Co- counsel to the United Mine Workers of America 1974 Pension Plan and Trust</p>
<p>Ministry of Justice and Attorney General Legal Services Branch P.O. Box 9289 Stn Prov Govt 4th Floor – 1675 Douglas Street Victoria, BC V8W 9J7 Fax: 250-387-0700</p> <p>David Hatter Tel: 250-387-1274 Email: David.Hatter@gov.bc.ca</p>	<p>Counsel to Her Majesty the Queen in right of the Province of British Columbia</p>

<p>AGLSBRevTax@gov.bc.ca</p> <p>Aaron Welch Tel: 250-356-8589 Email: Aaron.Welch@gov.bc.ca AGLSBRevTax@gov.bc.ca</p>	
<p>Department of Justice Government of Canada 900 – 840 Howe Street Vancouver, BC V6Z 2S9</p> <p>Neva Beckie Email: neva.beckie@justice.gc.ca</p>	<p>Counsel to Her Majesty the Queen in right of Canada</p>
<p>PJT Partners LP 280 Park Ave. New York, NY 10017</p> <p>Steve Zelin Email: zelin@pjtpartners.com</p>	<p>Financial Advisor</p>
<p>Blue Tree Advisors 32 Shorewood Place Oakville, ON L6K 3Y4</p> <p>William E. Aziz Email: waziz@bluetreadvisors.com</p>	<p>Chief Restructuring Officer</p>
<p>Miller Thomson LLP Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1</p> <p>Jeffrey Carhart Email: jcarhart@millerthomson.com</p>	<p>Counsel to Mitsui Matsushima Co., Ltd.</p>
<p>Miller Thomson LLP Barristers and Solicitors 840 Howe Street, Suite 1000 Vancouver, BC V6Z 2M1</p> <p>Heather L. Jones Tel. 604-643-1231 (direct) Tel. 604-687-2242 (main) Email: hjones@millerthomson.com</p>	<p>Counsel to Kevin James</p>
<p>Caterpillar Financial Services Limited 5575 North Service Road, Suite 600</p>	

<p>Madison, WV 25130</p> <p>Ken McCoy Email: kmccoy@erpfuels.com</p>	
<p>Dentons Canada LLP 15th Floor, Bankers Court 850 – 2nd Street SW Calgary, Alberta T2P 0R8 David Mann Email: david.mann@dentons.com</p>	<p>Counsel for Conuma Coal Resources Limited (Purchaser) and Guarantors</p>
<p>ERP Compliant Fuels, LLC ERP Compliant Coke, LLC Seneca Coal Resources, LLC Seminole Coal Resources, LLC</p> <p>Tom Clarke Email: tom.clarke@kissito.org</p>	<p>Guarantors</p>
<p>Lamarche & Lang 505 Lambert Street Whitehorse, Yukon Y1A 1Z8</p> <p>Murray J. Leitch Email: mleitch@lamarchelang.com</p>	<p>Counsel for Pelly</p>
<p>Parkland Fuel Corporation #5101, 333 – 96th Avenue NE Calgary, Alberta T3K 0S3</p> <p>Christy Elliott Email: Christy.elliott@parkland.ca</p>	<p>Legal Counsel for Parkland</p>
<p>Canada Anglo American</p> <p>Federico G. Velásquez Email: Federico.velasquez@angloamerican.com</p> <p>Jenny Yang Email: jenny.yang@angloamerican.com</p>	
<p>Malaspina Consultants</p> <p>Marianna Pinter Email: Marianna@malaspinaconsultants.com</p>	

<p>Boale Wood</p> <p>John McEown Email: jmceown@boalewood.ca</p>	
<p>Fasken Martineau</p> <p>John Grieve Email: jgrieve@fasken.com</p>	<p>Legal Counsel for Boale Wood</p>
<p>Cavalon Capital Corp. 436 Lands End Rd. North Saanich, BC V8L 5L9 Tel: 778-426-3329 Fax: 778-426-0544</p> <p><u>Managing Directors</u> David Tonken Email: tonken@icrossroads.com</p> <p>Greg Matthews Email : gregmatthews@shaw.ca</p>	