



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

APPLICATION RESPONSE

Application response of: United Mine Workers of America 1974 Pension Plan and Trust
(the "application respondent" or "1974 Plan").

THIS IS A RESPONSE TO the Notice of Application of the Petitioners dated the 9th day of August, 2016 (the "Notice of Application").

Part 1: ORDER CONSENTED TO

The application respondent consents to the granting of the order set out in the following paragraphs of Part 1 of the Notice of Application on the following terms: none.

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of the order set out in the following paragraphs of Part 1 of the Notice of Application on the following terms:

1. paragraph 1, unless paragraph 2 of the proposed form of order be amended to provide for an extension of the Stay Period up to and including October 31, 2016;
2. paragraph 3, unless:

- (a) the definition of "Intercompany Claim" set forth in Schedule "B" to the proposed form of order be amended to remove from such definition "any Claim by Walter Energy, Inc. or any of its non-Canadian affiliates against the Walter Canada Group";
- (b) the proposed form of order be amended to require the Monitor to report to the Court and the parties herein on the outcome of the Claims Process as soon after the Claims Bar Date as is practicable; and
- (c) the paragraphs of the proposed form of order in respect of the claims of the 1974 Plan be amended as requested by counsel for the 1974 Plan; and

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of the order set out in Part 1 of the Notice of Application on the following terms:

- 1. paragraph 2, provided, however, that the 1974 Plan is inclined to be supportive of the Transaction assuming that the information flow between the Monitor, its counsel and counsel to the 1974 Plan continues and the information provided is in line with the 1974 Plan's expectations; and
- 2. paragraph 4, provided, however, that the information flow between the Monitor, its counsel and counsel to the 1974 Plan continues and the information provided is in line with the 1974 Plan's expectations.

Part 4: FACTUAL BASIS

- 1. The 1974 Plan relies on the factual background of these proceedings set forth in the Petitioners' Notice of Application, Affidavit #2 of William E. Aziz, and Affidavit #3 of William E. Aziz, except as such facts may conflict with the facts set forth herein.
- 2. Counsel for the 1974 Plan has requested information contained in the Confidential SISP Materials to enable counsel and the financial advisors for the 1974 Plan (the "Advisors") to provide informed advice to the 1974 Plan.
- 3. Counsel acknowledged that they and the other Advisors would receive the Confidential SISP Materials subject to their obligations pursuant to the non-disclosure agreement among counsel for the Petitioners, the Monitor, counsel to the Monitor, counsel for the 1974 Plan, and financial advisors for the 1974 Plan (the "NDA").
- 4. On August 11, 2016, the Monitor and its counsel provided certain information to the Advisors and had a call with counsel for the 1974 Plan.

5. A dialogue remains open between the Monitor, its counsel and the Advisors regarding information that the Advisors require to assist the 1974 Plan in assessing the Transaction.
6. Assuming the information required is provided and is in line with the Advisors expectations, the 1974 Plan will likely not oppose Court approval of the Transaction.
7. As of the date hereof, however, the 1974 Plan is not in a position to take a definitive position on the Transaction.
8. Mr. Aziz overstates the degree to which the 1974 Plan was informed or consulted regarding the proposed claim process. Counsel to the 1974 Plan were generally informed by counsel to the Petitioners that the Court should decide whether the 1974 Plan should be allowed, however no details were provided as to the proposed procedure or deadlines as set forth in the Claims Process Order.
9. Specifically, the 1974 Plan has provided sufficient evidence to prove that the 1974 Plan's claim is a valid and enforceable claim against the Petitioners under US law.
10. As stated at paragraph 48 of the Monitor's Fourth Report to Court (the "**Fourth Report**"), the Petitioners and the Monitor have reviewed the information provided and "have concluded that the claim of the 1974 Pension Plan is unenforceable in Canada."
11. Despite repeated requests, the Monitor and the Petitioners have not provided the 1974 Plan with the reasons for their determination.
12. The Petitioners seek to have "any Claim by Walter Energy, Inc. or any of its non-Canadian affiliates against the Walter Canada Group (including for greater certainty any amount secured by one of the Charges)" (the "**US Intercompany Claims**") unaffected by the Claims Process Order.
13. The stakeholders have little visibility as to whether or not any of the Petitioners' US affiliates believe they have claims as against the Walter Canada Group. While there may be some justification to exempt intercompany claims amongst the Walter Canada Group and have the Monitor report on those as provided in the proposed form of Order, there is no persuasive basis as to why the Claims Bar Date should not apply to claims by other entities against the Walter Canada Group. To exempt such parties merely serves to create uncertainty as to the total universe of claims as against the Petitioners.

Part 5: LEGAL BASIS

Stay Extension Order

1. The Transaction is expected to close no later than September 15, 2016.
2. The Petitioners' proposed claims process contemplates that the Monitor shall seek a scheduling appointment before the Court, on notice to the Service List, to seek a schedule for delivery of materials and the hearing of a motion to determine the validity and quantum of the 1974 Plan's claims following the Claims Bar Date, which is proposed to be October 5, 2016.
3. The Petitioners' requested extension of the Stay Period to January 17, 2017, is lengthy and covers a period during which parties will be required to return to Court for a hearing on other matters.
4. At the June 24, 2016, hearing in respect of a stay extension, this Honourable Court expressed concern regarding a similarly lengthy Stay Period, and suggested a shorter extension "so as to make clear that the court's oversight continues even during this interim period of time." The Court also "considered that an earlier deadline would, of necessity, require that the parties focus on getting the matter resolved as soon as possible to avoid any further erosion of the cash resources."

Walter Energy Canada Holdings, Inc. (Re), 2016 BCSC 1413, para 8

5. A shorter extension of the Stay Period, to October 31, 2016, is appropriate in the circumstances and will ensure that parties work to resolve issues sooner and that the Court's oversight continues through to closing of the Transaction and implementation of the Claims Process.

Approval and Vesting Order

6. The Advisors remain in communication with the Monitor and its counsel regarding the Transaction.
7. As the Court is well aware, the Advisors have executed an NDA.
8. As a result, there is no harm to the Petitioners or the Sale Process in providing access to the Confidential SISP Materials to the Advisors so that the Advisors may use such information to inform their advice to the 1974 Plan.

9. Accordingly, assuming that continued discussions among the Advisors, the Monitor and its counsel proceed and additional information is in line with the Advisors' expectations, the 1974 Plan expects to be supportive of the Transaction.
10. As of the date of filing this response, the 1974 Plan is not in a position to take a definitive position on the Transaction.

Claims Process Order

The 1974 Plan Claim Process

11. The Claims Process Order, as currently drafted, does not appropriately deal with the 1974 Plan's claim.
12. In a typical claims process, when a claim has been disallowed, the petitioners and/or the monitor provide information to the disputed creditor to enable parties to join issue and properly adjudicate the claim.
13. Here, the 1974 Plan has proven a valid, enforceable claim under US law. The Petitioners and the Monitor have "come to a determination as to whether [that claim] would be allowed in a claims process." However, the basis for such determination has not been communicated with the 1974 Plan.

Fourth Report, para 48

14. Instead, the Petitioners seek Court approval to require the 1974 Plan "to serve ... materials seeking to prove that its Claim is enforceable" before having a dialogue that would enable the Petitioners and the 1974 Plan to join issue.
15. The 1974 Plan's position is that it has satisfied the burden that it has a valid and enforceable claim under US law which it believes this Court should allow. The 1974 Plan has sought confirmation from the Petitioners regarding whether their only objection to the claim is the issue of whether the Court should allow this valid US debt in Canada.
16. If the only disputed issue is whether a valid US law claim is enforceable in Canada, this is a legal issue to be determined by the Court.
17. If the Petitioners are seeking to dispute the validity of the 1974 Plan's claim under US law, the process necessary to resolve same will be different.
18. In any event, it is not appropriate for the Petitioners to require the 1974 Plan to prepare voluminous materials in respect of enforceability that may or may not address the Petitioners' objections to the 1974 Plan's claim.

19. Rather, the Petitioners and the Monitor should be required to provide the basis for their determination, and parties should move forward with determining a briefing schedule.

The US Intercompany Claims

20. Given the possibility of there being US Intercompany Claims and their potential impact on any possible compromise or arrangement with creditors or distribution, bringing clarity to the Intercompany Claims is a necessary element of any claims process implemented in respect of the Petitioners.

Bul River Mineral Corporation (Re), 2014 BCSC 1732, para 36

21. Including US Intercompany Claims in the Claims Process is necessary for stakeholders in these proceedings “to make an informed choice as to the alternatives presented to them. If distributions are being made or a plan is presented to creditors and voted upon, stakeholders should be able to place a degree of reliance in the claims bar process.”

Timminco Ltd. (Re), 2014 ONSC 3393, para 43

Sealing Order

22. The test for granting a sealing order is set out at paragraph 23 of the Notice of Application.

Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41

Sahlin v Nature Trust of British Columbia, Inc., 2010 BCCA 516

23. Given the Advisors’ execution of the NDA, there are no salutary effects of preventing the Advisors from reviewing information contained in the Confidential SISP Materials to be weighed against the deleterious effects.

24. Notably, the Supreme Court of Canada emphasized, at paragraph 57 of *Sierra Club*, that the Court must consider whether reasonable alternatives to the confidentiality order are available as well to restrict the order as much as reasonably possible while preserving commercial interests.

Sierra Club at para. 57

Rompsen Investment Corp. v. Hargate Properties Inc., 2012 ABQB 412 at para. 11

25. The 1974 Plan is a significant stakeholder, has a financial interest in having its Advisors review information contained in the Confidential SISP Materials and has no intention to bid on any of the assets of the Petitioners or enter into any transaction to acquire any interest in the Petitioners.

26. The Petitioners may argue that the 1974 Plan is not a stakeholder because they dispute the 1974 Plan's claim. However, although the validity of the 1974 Plan's claim has not yet been determined by the Court, 1974 Plan respectfully submits that the Court should take the claim on face value at this stage, and as such the 1974 Plan should be considered a significant stakeholder in these proceedings.

Walter Energy Canada Holdings, Inc. (Re), 2016 BCSC 1413, para 25

27. As a result, it is appropriate for the Advisors to review the information requested, to assist the 1974 Plan to understand the implications of the Transaction. Such understanding will allow the 1974 Plan to provide informed instructions to the Advisors regarding whether they support the Transaction, which views the Advisors could present to Court.

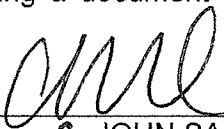
Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #3 of William Aziz, made August 9, 2016;
2. The Monitor's Fourth Report to Court, dated August 11, 2016; and
3. Such other and additional material as counsel may advise and the Court may admit.

The application respondent does not offer a time estimate for the application.

The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

Date: 11/August/2016



for: JOHN SANDRELLI
Canadian counsel for United Mine Workers
of America 1974 Pension Plan and Trust

Respondent's address for service is:

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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