



NO. S1510120
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. 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 IN SCHEDULE "A" TO THE INITIAL ORDER

PETITIONERS

Application Response of the Respondent Steelworkers

APPLICATION RESPONSE OF: United Steelworkers, Local 1-424 (the "Application Respondent")

TO: The Service List

THIS IS A RESPONSE TO: the Notice of Application of Walter Energy Holdings Inc et al, (the
Walter Canada Group) Applicants (Petitioners) filed November 16, 2016.

Part 1: ORDERS CONSENTED TO

1. The following paragraphs in the Applicants' Notice of Application: 1, 2, 3, and 4.

Part 2: ORDERS OPPOSED

2. The following paragraphs in the Applicants' Notice of Application: None.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

3. The following paragraphs in the Applicants' Notice of Application: None.

Part 4: FACTUAL BASIS

1. The Respondent Steelworkers relies on the facts set out in the Applicants' Statement of Uncontested Facts dated November 14, 2016 filed in support of this Application.

2. If this Application is not allowed, the Respondent Steelworkers will adduce further evidence to address those remaining issues raised in the Notice of Civil Claim and Responses filed in this matter, but not which are not addressed in the scope of the Application.

3. This evidence includes facts relating to the control of Walter Canada Group's mining operations, labour relations, and collective bargaining process and agreements.

Part 5: LEGAL BASIS

1. Under the Canadian conflict of laws rules, the 1974 Plan's Claim is governed by Canadian substantive law which does not recognize the 1974 Plan's Claim for the purposes of *CCAA* proceedings in this Court.

2. In the alternative, if the 1974 Plan's Claim 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 to Canada.

3. In the further alternative, if the 1974 Plan's Claim is governed by United States substantive law (including *ERISA*), and *ERISA* applies extraterritorially, that law is unenforceable by this Court as a penal, revenue or other public law of the United States.

4. In the further alternative, if the 1974 Plan's Claim is governed by United States substantive law (including *ERISA*) and *ERISA* applies extraterritorially, that law is unenforceable by this Court because it conflicts with Canadian public policies.

5. If this Application is not allowed, the Respondent Steelworkers will raise further legal arguments to address those remaining issues raised in the Respondent Steelworkers' Response to the Notice of Civil Claim filed in this matter, but not which are not addressed in the scope of the Application.

6. These legal issues include

- a) the reasonableness and equity of the *CCAA* distribution plan if the 1974 Plan's Claim is allowed;
- b) the appropriateness of different classes and priorities of claims for the *CCAA* distribution process in this matter; and
- c) the status of the Respondent Steelworkers Claim arising under a constitutionally protected collective bargaining process and the application of section 2(d) of the *Charter of Rights and Freedoms* values.

Part 6: MATERIAL TO BE RELIED UPON

The Respondent Steelworkers will rely upon:


- (i) The pleadings and affidavit and supporting materials filed in the *CCAA* proceedings in this matter to date;
- (ii) The Applicant Walter Canada Group's Book of Evidence filed in support of this Application; and
- (iii) Materials produced by the Applicant or other Respondents in support of this Application including expert reports.

The Application Respondent estimates that the application will take: 5 days.

[X] The Application Respondent has filed in this proceeding a document that contains the application respondent's address for service. The Application Respondent's ADDRESS FOR SERVICE is:

Victory Square Law Office LLP
Attn: Craig D. Bavis
710 - 777 Hornby Street
Vancouver, BC V6Z 1S4
P: 604-684-8421/F: 604-684-8427
email: cbavis@vslo.bc.ca

Date: November 23, 2016



Craig D. Bavis
Counsel for the Application Respondent