

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

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**WALTER CANADA GROUP'S BOOK OF EVIDENCE**  
**(Revised Volume I)**

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**WALTER CANADA GROUP'S BOOK OF EVIDENCE  
(REVISED)**

<b>TAB</b>	<b>Document</b>
<b>VOL I: Pleadings</b>	
1	Walter Canada Group's Statement of Uncontested Facts
2	Amended Notice of Civil Claim (1974 Plan)
3	Amended Response to Civil Claim (Walter Canada Group)
4	Amended Response to Civil Claim (United Steelworkers)
5	Response to Civil Claim (the Monitor)
6	Reply to United Steelworkers (1974 Plan)
6.1	Second Amended Response to Civil Claim of USW, Local 1-424
6.2	Notice of Application of the 1974 Plan for order dismissing Petitioner's summary trial application
6.3	Response of USW to UMWA-1974 Plan's Notice of Application
6.4	Application Response of Walter Canada Group re 1974 Plan's Notice of Application
6.5	Affidavit #2 of Susan Danielisz sworn December 8, 2016
6.5A	Walter Canada Group's Notice to Admit dated November 14, 2016 (without attachments)
6.5B	1974 Plan's Response to Notice to Admit dated November 27, 2016

<b>TAB</b>	<b>Document</b>
<b>VOL II: Decisions and Walter Energy Documents Filed in this CCAA Proceeding</b>	
7	Reasons for Judgment of Madam Justice Fitzpatrick dated January 26, 2016
8	Reasons for Judgment of Madam Justice Fitzpatrick dated September 23, 2016
9	1st Affidavit of William G. Harvey dated December 4, 2015 (with selected exhibits)
9A	List of Canadian Petitioners
9C	List of U.S. Petitioners
10	1 <sup>st</sup> Affidavit of William E. Aziz dated March 22, 2016 (with exhibit)
10A	Monitor's First and Second Certificates related to Bulldozer Transaction
<b>VOL III: 1974 Documents Filed in this CCAA Proceeding</b>	
11	Application Response of the 1974 Plan filed January 4, 2016
12	1 <sup>st</sup> Affidavit of Miriam Dominguez dated January 4, 2016 (with exhibits)
12A	Proof of Claim filed by 1974 Plan against Walter Resources in the US Bankruptcy Proceedings
12B	Proof of Claim filed by 1974 Plan against Walter Energy in the US Bankruptcy Proceedings
12C	US Bankruptcy Court Memorandum of Opinion and Order granting Walter US Debtors' 1113/1114 Motion dated December 28, 2015
13	Application Response of the 1974 Plan filed March 29, 2016
14	2 <sup>nd</sup> Affidavit of Miriam Dominguez dated March 29, 2016 (with selected exhibits)
14A	US Bankruptcy Court Order Approving Global Settlement Among the Debtors, Official Committee of Unsecured Creditors, Steering Committee and Stalking Horse Purchaser Pursuant to Fed. R. Bankr. P. 9019
14B	Order dated December 30, 2015, amending the 1113/114 Order
14D	Notice of Joint Motion for an Order (A) Authorizing Procedures to Implement the Global Settlement and (B) Granting Related Relief
14E	Order (A) Authorizing Procedures to Implement the Global Settlement and (B) Granting Related Relief
<b>VOL IV: Orders Granted and Documents filed in Court File No. S110653 (the Western Acquisition)</b>	
15	Order of Mr. Justice McEwan dated March 10, 2011 approving Western Acquisition Plan of Arrangement
16	1 <sup>st</sup> Affidavit of Keith Calder dated February 1, 2011 (without exhibits)
17	2 <sup>nd</sup> Affidavit of Keith Calder dated March 8, 2011 (without exhibits)

<b>TAB</b>	<b>Document</b>
<b>VOL V: New Evidence Filed by Walter Canada Group in Adjudication of 1974 Plan Claim</b>	
18	1 <sup>st</sup> Affidavit of Linda Sherwood dated November 14, 2016, (with corporation report exhibits)
19	2 <sup>nd</sup> Affidavit of Linda Sherwood dated November 14, 2016, (with Walter Energy filings with the United States Securities and Exchange Commission exhibits)
<b>VOL VI: Expert Evidence on U.S. Law to Assist in Adjudication of 1974 Plan Claim</b>	
20	Expert Report

**TAB 1**

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**WALTER CANADA GROUP'S STATEMENT OF UNCONTESTED FACTS**

For the Court's convenience, in this document the Walter Canada Group lists the facts that the Court can accept as true based on admissions in the pleadings or that are otherwise uncontested and supported by documents that this Court can consider without additional formal proof, all of which are contained in the Walter Canada Group's Book of Evidence, as follows:

*Admitted by the Walter Canada Group ("A")*: These facts were pleaded by the 1974 Plan and admitted by the Walter Canada Group. This category of admitted facts includes facts in respect of which the United Steelworkers, Local 1-424 (the "Respondent Steelworkers") have no knowledge. Should a subsequent proceeding be required to resolve the 1974 Plan's Claim, the Respondent Steelworkers may wish to lead evidence contradicting these facts.

*Facts pleaded by 1974 Plan of which Walter Canada Group has no knowledge but is prepared to accept as true for the purposes of this application ("NK")*: These are facts pleaded

by the 1974 Plan in respect of which the Walter Canada Group has no knowledge but is prepared to admit in this application without prejudice to its ability to lead contrary evidence in any subsequent proceeding involving the 1974 Plan or any other respondent.

***Facts contained in Court records that the Supreme Court of British Columbia can consider without formal proof (“CR”)***: The Court is entitled to look at its own records in any proceeding before it: *Petrelli v Lindell Beach Holiday Resort Ltd*, 2011 BCCA 367 (CanLII).<sup>1</sup> The Walter Canada Group has included in its Book of Evidence: (1) decisions in this CCAA Proceeding; (2) the decision of the Supreme Court of British Columbia in the application for approval of the plan of arrangement related to the Western Acquisition; and (3) evidence previously filed in this CCAA Proceeding or the Western Acquisition proceeding. Much of the evidence included in the Book of Evidence was filed by the 1974 Plan. Where the evidence was originally filed by the Walter Canada Group, we have included only evidence in respect of which the 1974 Plan expressly stated an intention to rely on that evidence.<sup>2</sup>

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<sup>1</sup> The Court of Appeal for British Columbia stated:

[36] It is well established, however, that proof in accordance with s. 26 is not needed in order for a court to make use of its own records. Courts have long accepted that they are entitled to look at their own records even if those records have not been formally proven and entered in evidence: *R v Jones* (1839), 8 Dowl 80; *Craven v Smith* (1869), LR 4 Exch 146. In *R v Lewis*, [1941] 4 DLR 640, this Court accepted that a judge of the County Court was entitled to rely on the notice of appeal in the court file to show that a notice had been filed on time. In *R v Hunt* (1986), 18 OAC 78 at 79, the Ontario Court of Appeal stated the general proposition that “[t]he Court has at all times the power to look at its own records and take notice of their contents”.

[37] Such documents do not have to be attached to affidavits, or presented to the court in the same way that most documentary evidence is presented. In *R v Truong*, 2008 BCSC 1151 (CanLII) at para. 57, 235 CCC (3d) 547, Smart J. described the situation as follows:

[57] It has been said that documents do not walk into a courtroom unaccompanied. Usually, this is true. Documents are typically introduced into evidence through the evidence of a witness or by affidavit evidence pursuant to a statutory provision. See for example s. 29 and s. 30 of the *Canada Evidence Act*. However, documents in the court’s own files are an exception to this usual rule.

<sup>2</sup> In particular, in its January 4, 2016, Application Response, the 1974 Plan listed as “Materials to be Relied On” the 1<sup>st</sup> Affidavit of William G. Harvey sworn December 4, 2015. In its March 29, 2016, Application Response, the 1974 Plan listed as “Materials to be Relied On” the 1<sup>st</sup> Affidavit of William E. Aziz sworn March 22, 2016.

**Facts contained in Public Documents (“PD”):** The Court is permitted to rely on public documents for the truth of their contents: *Finestone v The Queen*, [1953] 2 SCR 107, 1953 CanLII 81 (SCC).<sup>3</sup> This exception to the hearsay rule applies when four conditions are met: (1) The subject matter of the statement must be of a public nature; (2) The statement must have been prepared with a view to being retained and kept as a public record; (3) It must have been made for a public purpose and available to the public for inspection at all times; and (4) It must have been prepared by a public officer in pursuance of his duty: *Radke v MS et al*, 2005 BCSC 1355 (CanLII), at para 51. Pursuant to the public documents exception to the hearsay rule, the Walter Canada Group includes in its Book of Evidence an affidavit attaching Corporations Reports maintained and prepared by provincial governments.

**Other Documentary Evidence (“DE”):** The Walter Canada Group includes in its Book of Evidence an affidavit attaching materials filed by Western Energy with the United States Securities and Exchange Commission (“SEC”) and available on the SEC’s publicly-available Electronic Data Gathering, Analysis, and Retrieval system (“EDGAR”). These documents are not filed to prove the truth of their contents but rather to prove that the statements in the documents were made.

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<sup>3</sup> At p. 109, the Supreme Court of Canada said: “As early as 1785 in *R v Aickles*, it is said: ‘The law reposes such a confidence in public officers that it presumes they will discharge their several trusts with accuracy and fidelity; and therefore whatever acts they do in discharge of their public duty may be given in evidence and shall be taken to be true, under such a degree of caution as the nature and circumstances of each case may appear to require.’”



***Walter US Corporate Parties***

1. A: Walter Energy Inc. (“Walter Energy”) is a public company incorporated under the laws of Delaware and headquartered in Birmingham, Alabama (*Claim para. 24; Walter admits; USW no knowledge*).
2. A. Walter Energy did business in West Virginia and Alabama (*Claim para. 79; Walter admits; USW no knowledge*).
3. NK: Walter Energy’s board of directors and its management team operated out of Birmingham, Alabama (*Claim para. 80; Walter no knowledge; USW no knowledge*).
4. A: Jim Walter Resources Inc. (“Walter Resources”) is wholly owned by Walter Energy (*Claim para. 25; Walter admits; USW no knowledge*).
5. NK: Walter Resources is incorporated in Alabama and did business in Alabama (*Claim para. 81; Walter no knowledge; USW no knowledge*).
6. NK: Walter Resources’ management team operated out of Birmingham, Alabama (*Claim para. 82; Walter no knowledge; USW no knowledge*).

***The 1974 Plan***

7. NK: The United Mine Workers of America 1974 Pension Plan and Trust (the “1974 Plan”) is a pension plan and irrevocable trust established in accordance with section 302(c)(5) of the *Labour Management Relations Act of 1947*, 29 U.S.C. § 186(c)(5) (*Claim para. 1; Walter no knowledge; USW no knowledge*).
8. CR: The 1974 Plan was established in 1974 (*1<sup>st</sup> Affidavit of Miriam Dominguez, Exhibit A (1974 Proof of Claim), para. 2*).

9. NK: The 1974 Plan is resident in Washington, DC (*Claim para. 83; Walter no knowledge; USW no knowledge*).
10. NK: The trustees of the 1974 Plan are resident in the United States (*Claim para. 84; Walter no knowledge; USW no knowledge*).
11. NK: The 1974 Plan is a multiemployer, defined benefit pension plan under section 3(2), (3), (35), (37)(A) of ERISA, 29 U.S.C. § 1002(2), (3), (35), (37)(A) (*Claim para. 22; Walter no knowledge; USW no knowledge*).
12. NK: All participating employers in the 1974 Plan are resident in the United States (*Claim para. 85; Walter no knowledge; USW no knowledge*).
13. CR: Only one of the Walter US entities, Walter Resources, is a party to a collective bargaining agreement with the 1974 Plan (*Reasons for Madam Judgment of Justice Fitzpatrick dated January 26, 2016, para. 13*).
14. NK: Walter Resources (or a predecessor entity) had been a signatory to the 1978, 1981, 1984, 1988, 1993, 2002, 2007 and 2011 National Bituminous Coal Wage Agreements (the 2011 National Bituminous Coal Wage Agreement, the "CBA"), and, pursuant thereto, had been a participating employer in the 1974 Plan (*Claim para. 23; Walter no knowledge; USW no knowledge*).
15. CR: No member of the Walter Canada Group is or ever has been party to the CBA (*Inference based on Claim para. 23; Walter Response para. 24; Reasons for Judgment of Madam Justice Fitzpatrick dated January 26, 2016, para. 13*).

16. NK: The 1974 Plan is in financial distress and had unfunded vested benefits of approximately US\$5.8 billion as of July 1, 2015 (*1974 Plan Reply to USW, para. 3*).

***The Western Acquisition***

17. A: Before 2011, Walter Energy did not have any operations or subsidiaries in Canada or the United Kingdom (*Claim para. 47; Walter admits; USW no knowledge*).
18. A: On March 9, 2011, Walter Energy incorporated Walter Energy Canada Holdings, Inc. ("Canada Holdings") (*Claim para. 40; Walter admits; USW no knowledge*).
19. A: Canada Holdings is a company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2 (*Claim para. 2; Walter admits; USW admits*).
20. A: Canada Holdings is wholly owned by Walter Energy (*Claim para. 41; Walter admits; USW admits*).
21. A: Canada Holdings was incorporated specifically to hold the shares of Western Coal Corp. ("Western") and its subsidiaries (*Claim para. 42; Walter admits; USW no knowledge*).
22. A: Western and its subsidiaries operated coal mines in British Columbia, the United Kingdom and the United States (*Claim para. 43; Walter admits; USW no knowledge*).
23. CR: Walter Energy's Western Acquisition was publicly announced and was completed pursuant to a plan of arrangement approved by the British Columbia Supreme Court (*Order of Mr. Justice McEwan dated March 10, 2011 approving Western Acquisition Plan of Arrangement*).

24. CR: Walter Energy and Western began negotiating the Western Acquisition in late October 2010 (*1st Affidavit of Keith Calder dated February 1, 2011, para. 35*).
25. DE: On November 18, 2010, Walter Energy issued a press release and filed both the press release and a Form 8-K with the SEC on its publicly-available EDGAR system. In the press release, Walter Energy stated that Walter Energy had entered into a share purchase agreement seeking to acquire approximately 19.8% of the outstanding common shares of Western. The press release referred to Walter Energy's intention to complete a "business combination" with Western (*2nd Affidavit of Linda Sherwood dated November 14, 2016, Exhibit A*).
26. DE: On December 2, 2010, Walter Energy issued a press release and filed both the press release and a Form 8-K with the SEC on EDGAR. In the press release, Walter Energy announced that it had extended its exclusivity agreement with Western. Walter Energy also stated "Under the terms of the agreement, which was announced on November 18, 2010, both companies are working exclusively with each other toward the negotiation of a definitive agreement to give effect to Walter Energy's proposal to acquire Western" (*2nd Affidavit of Linda Sherwood dated November 14, 2016, Exhibit B*).
27. DE: On December 2, 2010, Walter Energy issued a press release and filed both the press release and a Form 8-K with the SEC on EDGAR. In the press release, Walter Energy announced that:
- (a) it had entered into an Arrangement Agreement with Western whereby Walter Energy would acquire all of the outstanding common shares of Western;

- (b) the “transaction will be implemented by way of a court-approved plan of arrangement under British Columbia law”; and
- (c) in connection with the arrangement, Walter Energy entered into a debt commitment letter pursuant to which Walter Energy would borrow \$2,725 million of senior secured credit facilities, “the proceeds of which will be used (i) to fund the cash consideration for the transaction, (ii) to pay certain fees and expenses in connection with the transaction, (iii) to refinance all existing indebtedness of the Company and Western Coal and their respective subsidiaries and (iv) to provide for the ongoing working capital of the Company and its subsidiaries” (*2nd Affidavit of Linda Sherwood dated November 14, 2016, Exhibit C*).

- 28. DE: On January 21, 2011, Walter Energy issued a press release and filed both the press release and a Form 8-K with the SEC on EDGAR. In the press release, Walter Energy stated that the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 had expired and that the Canadian Competition Bureau had issued a “no-action” letter (*2nd Affidavit of Linda Sherwood dated November 14, 2016, Exhibit D*).
- 29. DE: On February 15, 2011, Walter Energy issued a press release and filed both the press release and a Form 8-K with the SEC on EDGAR. In the press release, Walter Energy announced the Company’s fourth quarter and full-year 2010 results. Walter Energy also reported that the Western Acquisition was progressing (*2nd Affidavit of Linda Sherwood dated November 14, 2016, Exhibit E*).
- 30. DE: On March 2, 2011, Walter Energy issued a press release and filed both the press release and a Form 8-K with the SEC on EDGAR. In the press release, Walter Energy announced that once the Western Acquisition was complete, Joseph B. Leonard (then-

CEO of Walter) would step down from his position and Keith Calder (then-CEO of Western) would be appointed as CEO (*2nd Affidavit of Linda Sherwood dated November 14, 2016, Exhibit F*).

31. DE: On March 11, 2011, Walter Energy issued a press release and filed both the press release and a Form 8-K with the SEC on EDGAR. In the press release, Walter Energy announced that the shareholders of Western overwhelmingly voted in favour of the proposed plan of arrangement. Walter Energy also attached a press release stating that the Supreme Court of British Columbia had issued a final order approving the proposed plan of arrangement (*2nd Affidavit of Linda Sherwood dated November 14, 2016, Exhibit G*).

32. CR: No one filed a Response to Petition in respect of the application to approve the Plan of Arrangement (*2nd Affidavit of Keith Calder dated March 8, 2011, para. 16*).

33. DE: On March 28, 2011, Walter Energy issued a press release and filed both the press release and a Form 8-K with the SEC on EDGAR. In the press release, Walter Energy announced that the Minister of Industry, under the *Investment Canada Act*, approved the proposed acquisition of Western (*2nd Affidavit of Linda Sherwood dated November 14, 2016, Exhibit H*).

34. A: On April 1, 2011, Canada Holdings acquired all outstanding common shares of Western (the "Western Acquisition") (*Claim para. 44; Walter admits; USW no knowledge*).

35. NK: At the time of the Western Acquisition, the 1974 Plan had an unfunded liability of greater than US\$4 billion (*Claim para. 56; Walter no knowledge; USW no knowledge*).

36. A: The Western Acquisition included the Brule, Wolverine and Willow Creek mines (*Claim para. 45; Walter admits; USW no knowledge*).
37. A: Total consideration paid by Walter Energy in respect of the Western Acquisition was approximately US\$3.7 billion (*Claim para. 46; Walter admits; USW no knowledge*).
38. A: Concurrently, and in connection with entering into the arrangement agreement with Western, Walter Energy, Western, and Canada Holdings entered into a credit facility (the "Credit Facility") with Morgan Stanley Senior Funding, Inc., the Bank of Nova Scotia and the other lenders thereunder (the "Bank Lenders") (*Claim para. 48; Walter admits; USW no knowledge*).
39. CR: The Credit Facility was also used to pay existing Walter US Group debt and to pay fees (*Walter Response para. 34; 1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 32*).
40. A: The majority of the funding Canada Holdings paid for the Western Acquisition was obtained under a hybrid debt transaction (the "Hybrid Financing") (*Claim para. 51; Walter admits; USW no knowledge*).
41. A: As part of the Hybrid Financing, in substance, Walter Energy advanced approximately US\$2 billion in cash to Canada Holdings to enable Canada Holdings to purchase the Western Coal entities (*Claim para. 52; Walter admits; USW no knowledge*).
42. A: Walter Energy incurred significant debt in relation to the Western Acquisition (*Claim para. 54; Walter admits; USW no knowledge*).

43. CR: After completing the Western Acquisition, the Walter Group engaged in a series of internal restructurings to rationalize operations and organize the Walter Group into geographical business segments, the Walter US Group, the Walter Canada Group and the Walter UK Group (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 36*).

***Walter Canada Corporate Parties and Structure***

44. A: The Petitioners in these CCAA Proceedings comprise Canada Holdings and all entities owned directly or indirectly by Walter Energy that are incorporated or organized under the laws of Canada or its provinces (*Claim para. 27; Walter admits; USW no knowledge*).
45. A: Walter Canadian Coal ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2 (*Claim para. 3; Walter admits; USW no knowledge*).
46. CR: Walter Canadian Coal ULC was formed on June 28, 2012 (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 12*).
47. A: Walter Canadian Coal Partnership is a partnership organized under the laws of British Columbia, with an address for service at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2 (*Claim para. 11; Walter admits; USW no knowledge*).
48. A: Canada Holdings is the general partner of Walter Canadian Coal Partnership (*Claim para. 29; Walter admits; USW no knowledge*).
49. PD: Walter Canadian Coal Partnership was registered on July 25, 2012 (*1<sup>st</sup> Affidavit of Linda Sherwood, Exhibit D*).



50. A: Walter Canadian Coal Partnership is the Petitioners' principal operating entity (*Claim para. 28; Walter admits; USW no knowledge*).
51. A: Walter Canadian Coal Partnership is a partner of each of the three B.C. partnerships that operate the Canadian mines: Wolverine Coal Partnership, Brule Coal Partnership and Willow Creek Coal Partnership (*Claim para. 31; Walter admits; USW no knowledge*).
52. A: Each of the partnerships has a separate B.C. unlimited liability company as its other partner (*Claim para. 32; Walter admits; USW no knowledge*):
- (a) A: Wolverine Coal ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2 (*Claim para. 4; Walter admits; USW admits*).
  - (b) PD: Wolverine Coal ULC was incorporated on June 27, 2012 (*1<sup>st</sup> Affidavit of Linda Sherwood, Exhibit E*).
  - (i) A: Wolverine Coal Partnership is a partnership organized under the laws of British Columbia, with an address for service at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2 (*Claim para. 12; Walter admits; USW no knowledge*).
  - (ii) PD: Wolverine Coal Partnership was registered on July 16, 2012 (*1<sup>st</sup> Affidavit of Linda Sherwood, Exhibit F*).
  - (c) A: Brule Coal ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West

Georgia Street, Vancouver, BC V6C 3L2 (*Claim para. 5; Walter admits; USW no knowledge*).

(d) PD: Brule Coal ULC was incorporated on June 27, 2012 (*1<sup>st</sup> Affidavit of Linda Sherwood, Exhibit A*).

(i) A: Brule Coal Partnership is a partnership organized under the laws of British Columbia, with an address for service at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2 (*Claim para. 13; Walter admits; USW no knowledge*).

(ii) PD: Brule Coal Partnership was registered on July 25, 2012 (*1<sup>st</sup> Affidavit of Linda Sherwood, Exhibit B*).

(e) A: Willow Creek Coal ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2 (*Claim para. 7; Walter admits; USW no knowledge*).

(i) A: Willow Creek Coal Partnership is a partnership organized under the laws of British Columbia, with an address for service at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2 (*Claim para. 10; Walter admits; USW no knowledge*).

53. A: Cambrian Energybuild Holdings ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2 (*Claim para. 6; Walter admits; USW no knowledge*).

54. PD: Cambrian Energybuild Holdings ULC was incorporated on June 27, 2012 (*1<sup>st</sup> Affidavit of Linda Sherwood, Exhibit C*).
55. A: Pine Valley Coal Ltd. is a company incorporated under the laws of Alberta, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2 (*Claim para. 8; Walter admits; USW no knowledge*).
56. A: 0541237 BC Ltd. is a company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2 (*Claim para. 9; Walter admits; USW no knowledge*).

***The Walter Canada Group's Business***

57. CR: The Walter Group operates its business in two distinct segments: (i) US Operations, and (ii) Canadian and UK Operations (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 10(c)*).
58. CR: After the Western Acquisition, the Walter Group's public reporting divided the Walter Group into the Walter US Group and the Walter Non-US Group reporting segments (*Walter Response para. 14; 1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, paras. 106-107*).
59. CR: Walter Energy, a public company, reported its financial results by segment and does not provide financial reporting for the Walter Canada Group or the Walter UK Group independently (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 10(c)*).
60. CR: The Walter Canada Group and the Walter UK Group are operated separately and there is little overlap between the two corporate groups, other than the fact that the President of Canada Holdings is also the President of Energybuild Group Limited, the

parent company of all of the UK members of the Walter Group (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 48*).

61. CR: British Columbia is the Walter Canada Group's chief place of business (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 15*).

62. CR: The Walter US Group provided essential management services to the Walter Canada Group, including accounting, procurement, environmental management, tax support, treasury functions, and legal advice (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 30*).

63. CR: Walter Energy and its subsidiaries provided these services to the Walter Canada Group, including services pursuant to certain management agreements and other intercompany agreements (collectively, the "Shared Services") (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 149*).

64. CR: As of December 2015, the Walter Canada Group paid approximately \$1 million per month to the Walter US Group for the Shared Services, based on a historical overhead allocation methodology (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 30*).

65. CR: Given the importance of these Shared Services to the Walter Canada Group's operations, the expertise and experience of the Walter US Group and the significant extent to which the Walter Canada Group relied on the Walter US Group to provide these essential services, the Walter Canada Group paid the Walter US Group during the CCAA proceeding on a basis consistent with then-current payment terms and business practices

but subject to certain changes to reflect the set of services then needed by the Walter Canada Group (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 149*).

66. CR: The Walter Canada Group and the Walter US Group negotiated to address the provision of these Shared Services and the pricing of such services until the consummation of the transaction contemplated by the US APA (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 30*).
67. CR: William Harvey, of the City of Birmingham, Alabama, was the Executive Vice President and Chief Financial Officer of Canada Holdings (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 1*).
68. A: Mr. Harvey was also the Chief Financial Officer and Executive Vice President of Walter Energy (*Claim para. 90; Walter admits; USW no knowledge*).
69. CR: Mr. Harvey, and four other officers of various Walter Canada Group companies who were also employees of Walter Energy, resigned on January 20, 2016 (*1<sup>st</sup> Affidavit of William E Aziz dated March 22, 2016, para. 21*).
70. CR: In certain circumstances, directors and officers of the Walter Canada Group can be held liable for certain obligations owing to employees and government entities. As of December 2015, the Walter Canada Group estimated (with the assistance of the Proposed Monitor) that the obligations in respect of Walter Canada Group unpaid wages, unremitted source deductions, unpaid accrued vacation pay and certain taxes could amount to a total potential director liability of approximately \$2.5 million (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 155*).

71. CR: The Canadian operations principally included the Brule and Willow Creek coal mines, located near Chetwynd, BC, and the Wolverine coal mine, near Tumbler Ridge, BC (*Reasons for Judgment of Madam Justice Fitzpatrick dated January 26, 2016, para. 3*).
72. CR: The principal assets of the Petitioners are the cash proceeds of the Brule, Willow Creek and Wolverine mines, located in northeast British Columbia, and the Petitioners' 50% interest in the Belcourt Saxon Coal Limited Partnership (*Claim para. 30, which did not refer to the cash proceeds; Reasons for Judgment of Madam Justice Fitzpatrick dated September 23, 2016, paras. 12 and 14*).
73. CR: The Walter Canada Group did not and does not have assets or carry on business in the United States (*Walter Response para. 28; 1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, paras. 48-70*).
74. CR: As of December 4, 2015, the Walter Canada Group cumulatively employed a total of approximately 315 active and inactive employees in Canada, including approximately 280 inactive, unionized employees employed at the Wolverine Mine and certain employees on disability leave (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 72*).
75. CR: Some of the Walter Canada Group's former employees were members of one of the following two unions: the Respondent Steelworkers (para. 80) and the Christian Labour Association of Canada (para. 76) (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015*).

76. CR: The collective agreements with the Respondent Steelworkers and the Christian Labour Association of Canada were governed by the B.C. *Labour Relations Code* (1<sup>st</sup> *Affidavit of William G. Harvey dated December 4, 2015, paras. 76 and 81*).
77. CR: The Respondent Steelworkers asserted claims relating to the Northern Living Allowance and certain claims related to the notice provisions under s. 54 of the B.C. *Labour Relations Code* (1<sup>st</sup> *Affidavit of William G. Harvey dated December 4, 2015, para. 84*).
78. CR: The 1974 Plan does not allege that the Walter Canada Group employed any beneficiaries of the 1974 Plan or any person who was a member of the United Mine Workers of America union. As a matter of fact, the Walter Canada Group did not employ any such persons (*Walter Response para. 25; Inference drawn from 1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, paras. 76, 80*).
79. CR: The 1974 Plan does not allege that the Walter Canada Group contributed to the 1974 Plan. As a matter of fact, the Walter Canada Group did not contribute to the 1974 Plan (*Walter Response para. 26; Inference based on Claim para. 23; Reasons for Judgment of Madam Justice Fitzpatrick dated January 26, 2016, para. 13*).
80. CR: In the period when Walter Resources was a contributing employer to the 1974 Plan, the Walter Canada Group did not have any obligation to contribute to the 1974 Plan nor does the 1974 Plan allege that the Walter Canada Group had such an obligation (*Walter Response para. 27; Inference based on Claim para. 23; Reasons for Judgment of Madam Justice Fitzpatrick dated January 26, 2016, para. 13*).

81. CR: The Walter Canada Group's operations were subject to environmental assessment under the B.C. *Environmental Assessment Act* and its predecessor legislation, the *Mine Development Assessment Act*. Each mine was issued an environmental assessment certificate that sets out the criteria for designing and constructing the project, along with a schedule of commitments the Walter Canada Group made to address concerns raised through the environmental assessment process. If, for any reason, the Walter Canada Group's operations were not conducted in accordance with the environmental assessment certificate, the Walter Canada Group's operations could have been temporarily suspended until such time as its operations were brought back into compliance (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 85*).
82. CR: Any significant changes to the Walter Canada Group's operations or further development of its properties in B.C. could have triggered a federal or provincial environmental assessment or both (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 86*).
83. CR: Each of the Walter Canada Group's mining sites were inspected by the British Columbia Ministry of Energy and Mines in September 2014 (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 87*).
84. CR: Pursuant to the BC *Mines Act*, the Walter Canada Group's operations required permits outlining the details of the work at each mine and a program for the conservation of cultural heritage resources and for the protection and reclamation of the land and watercourses affected by the mine. The Chief Inspector of Mines could issue a permit with conditions, including requiring that the owner, agent, manager or permittee give security in an amount and form specified by the Chief Inspector for mine reclamation and



to provide for the protection of watercourses and cultural heritage resources affected by the mine. The reclamation security could have been applied towards mine closure or reclamation costs and other miscellaneous obligations if permit conditions were not met. Detailed reclamation and closure requirements are contained in the *Health, Safety and Reclamation Code for Mines in British Columbia* (the “*Mine Code*”) established under *Mines Act* (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 88*).

85. CR: Under the *Mines Act* and the *Mine Code*, the Walter Canada Group filed mine plans and reclamation programs for each of its operations. The Walter Canada Group accrued for reclamation costs to be incurred related to the operation and eventual closure of its mines. Additionally, under the terms of each mine permit, the Walter Canada Group was required to submit an updated mine plan every five years. The Walter Canada Group submitted updated five-year mine plans for Wolverine Mine and Brule Mine in 2013 (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 89*).

86. CR: The Walter Canada Group experienced some issues in meeting the revised provincial water quality guidelines relating to selenium, nitrate and sulphate levels at the Brule Mine (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 57*).

87. CR: The Walter Canada Group’s Mining Permits were non-assignable and non-transferrable unless amended, pursuant to s. 11.1 of the *Mines Act*, by way of application to the Chief Inspector or its delegate. The Mining Permits also required the permittee to notify the Chief Inspector of Mines of any intention to depart from either the work plan or reclamation program “to any substantial degree”, and to not proceed without written authorization (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 92*).

88. CR: In addition to the Mining Permits, each of the mining sites had obtained the following types of permits/licenses to operate:

- (a) Environmental Assessment Certificates (“EACs”);
- (b) Coal leases or licences;
- (c) Various environmental permits including (i) air contaminant discharge permits (due to the dust or fine particulate matter created during the operations), (ii) water permits (due to the need to use or divert water existing on the site for the operations) and (iii) waste / effluent discharge permits (together, “Environmental Permits”);
- (d) licenses to cut and remove timber and permits to use forestry service roads issued under the *Forestry Act*;
- (e) Explosive storage and handling permits issued under the *Mines Act*; and
- (f) Other land tenures such as statutory right of ways and licenses of occupation (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 93*).

89. CR: It was imperative that the Walter Canada Group retain all of their EACs, coal leases and licenses, Environmental Permits and other rights throughout the restructuring proceedings to ensure that they could continue to operate and, should conditions prove favourable, ramp up mining at one or more of the Canadian mines. Without the EACs, coal leases and licences, Environmental Permits and other rights described above, the Walter Canada Group was prohibited from undertaking any activity on the site, including

ongoing maintenance and remediation (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 94*).

***Walter US Chapter 11 Proceedings***

90. A: On July 15, 2015, the US Debtors commenced proceedings (the “Chapter 11 Proceedings”) under Chapter 11 of Title 11 of the United States Code (the “US Bankruptcy Code”) (*Claim para. 58; Walter admits; USW no knowledge*).
91. CR: The US Bankruptcy Court found as a fact that: “However, despite the high quality of met coal that the Debtors sell, the Debtors, like many other US coal producers, were unable to survive the sharp decline in the global met coal industry and filed for Chapter 11 relief on July 15, 2015” (*1<sup>st</sup> Affidavit of Miriam Dominguez, Exhibit C (Memo of Opinion re 1113/1114 Order), P. 3, para. 1*).
92. CR: The US Bankruptcy Court found as a fact that: “The decline of the global met coal industry since 2011 is well established and has devastated the industry. Fundamental downward shifts in the Chinese economy, coupled with the increase of low-cost supply of met coal from Australia and Russia, have driven met coal prices down from their historic high of \$330 per metric ton in 2011 to their current low of \$89 per metric ton.” (*1<sup>st</sup> Affidavit of Miriam Dominguez, Exhibit C (Memo of Opinion re 1113/1114 Order), P. 6, para. 7*).

***Walter Canada Group CCAA Proceedings***

93. CR: The timing of the Western Acquisition could not have been worse. Since 2011, the market for metallurgical coal fell dramatically. This in turn led to financial difficulties in all three jurisdictions in which the Walter Group operated. The three Canadian mines

were placed in care and maintenance between April 2013 and June 2014 (*Reasons for judgment of Madam Justice Fitzpatrick dated January 26, 2016, para. 4*).

94. CR: As part of the CCAA Proceedings, the Willow Creek Coal Partnership and Brule Coal Partnership planned to enter into an agreement with Walter Resources whereby Walter Resources would buy three bulldozers from the Partnerships (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 97*).
95. CR: Only one of the three bulldozers met certain US regulatory requirements for import into the United States (*1<sup>st</sup> Affidavit of William E. Aziz dated March 22, 2016, para. 28*).
96. CR: By way of Bill of Sale dated December 29, 2015, Brule Coal Partnership sold one bulldozer to Walter Resources (*1<sup>st</sup> Affidavit of William E. Aziz dated March 22, 2016, Exhibit A*).
97. CR: The Bill of Sale was “made under and shall be governed by and construed in accordance with the law of the Province of British Columbia and the federal laws of Canada applicable in the Province of British Columbia” (*1<sup>st</sup> Affidavit of William E. Aziz dated March 22, 2016, Exhibit A*).

***1974 Plan’s Proofs of Claim in the Chapter 11 Proceedings***

98. NK: On October 8, 2015, the 1974 Plan filed proofs of claim in the Chapter 11 Proceedings (*Claim para. 59; Walter no knowledge; USW no knowledge*).
99. CR: The 1974 Plan filed a proof of claim against Walter Resources (*1<sup>st</sup> Affidavit of Miriam Dominguez, Exhibit A*).

100. CR: The 1974 Plan filed a proof of claim against Walter Energy (*1<sup>st</sup> Affidavit of Miriam Dominguez, Exhibit B*) and all other US Debtors (*2<sup>nd</sup> Affidavit of Miriam Dominguez, Exhibit D, p. 82*).
101. CR: The 1974 Plan filed a proof of claim against Walter Energy which refers to “each of the debtors and debtors-in-possession” in the Chapter 11 Proceedings (*1<sup>st</sup> Affidavit of Miriam Dominguez, Exhibit B, para. 4*).
102. CR: The Proofs of Claim filed by the 1974 Plan in the Chapter 11 Proceedings do not refer to the Walter Canada Group (*USW response para. 9; 1<sup>st</sup> Affidavit of Miriam Dominguez, Exhibits A & B*).

***The Granting and Implementation of the Global Settlement Order in the Chapter 11 Proceedings***

103. CR: On December 22, 2015, the US Bankruptcy Court entered an order (the “Global Settlement Order”) (*2<sup>nd</sup> Affidavit of Miriam Dominguez, Exhibit A*).
104. CR: The Global Settlement Order states: “The terms of the Global Settlement set forth in the Settlement Term Sheet, a copy of which is attached hereto as Exhibit 1, are approved and are binding on the Parties to the extent provided therein” (*2<sup>nd</sup> Affidavit of Miriam Dominguez, Exhibit A, p. 2, para. 2*).
105. CR: The Settlement Term Sheet entitles unsecured creditors to receive 1% of the common equity issued in the Stalking Horse Purchaser on closing as well as the right to participate in any exit financing (*2<sup>nd</sup> Affidavit of Miriam Dominguez, Exhibit A, p. 7, para. 2(a)*).

106. CR: The Global Settlement Order states: “This Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this Order” (*2<sup>nd</sup> Affidavit of Miriam Dominguez, Exhibit A, p. 4, para. 4*).
107. CR: Exhibit 1 to the Global Settlement Order states: “This Term Sheet constitutes a legally binding obligation of the Debtors, Steering Committee, Stalking Horse Purchaser and UCC” (*2<sup>nd</sup> Affidavit of Miriam Dominguez, Exhibit A, p. 6*).
108. CR: Exhibit 1 to the Global Settlement Order does not include the Walter Canada Group as Parties (*2<sup>nd</sup> Affidavit of Miriam Dominguez, Exhibit A, p. 6*).
109. CR: The Notice of Joint Motion for an Order (A) Authorizing Procedures to Implement the Global Settlement and (B) Granting Related Relief filed jointly by the US Debtors and the Unsecured Creditors Committee states: “Notably, the relief this Motion requests does not increase or diminish the aggregate distribution to unsecured creditors from the Chapter 11 Estates. Unsecured creditors are not entitled to any recovery from the Chapter 11 Estates beyond that established by the Global Settlement, which is fixed at the Equity and corresponding participating in any exit financing” (*2<sup>nd</sup> Affidavit of Miriam Dominguez, Exhibit D, p. 65, para. 11*).
110. CR: On March 24, 2016, the US Bankruptcy Court entered an order (the “Global Settlement Implementation Order”) (*2<sup>nd</sup> Affidavit of Miriam Dominguez, Exhibit E*).
111. CR: The Global Settlement Implementation Order stated: “The Global Settlement may be implemented and consummated in accordance with its terms and the terms hereof, including the application of the Participation Procedures, the Aggregate Claim Amount, and the Minimum Claim Amount for purpose of making distributions on account of the

Global Settlement to holders of unsecured claims and the solicitation of creditors in any exit financing” (2<sup>nd</sup> Affidavit of Miriam Dominguez, Exhibit E, para. 3).

112. CR: Pursuant to the Global Settlement Implementation Order, the Equity Trust is not permitted to make a distribution to claims below \$2 million (2<sup>nd</sup> Affidavit of Miriam Dominguez, Exhibit D, p. 64, para. 10; 2<sup>nd</sup> Affidavit of Miriam Dominguez, Exhibit E, para. 3).

***The US Bankruptcy Court Grants the 1113/1114 Order in the Chapter 11 Proceedings***

113. NK: On December 28, 2015, the US Bankruptcy Court entered an order (the “1113/1114 Order”) authorizing Walter Energy and its US affiliates to reject the CBA and declaring that Walter Resources had no further obligation to contribute to the 1974 Plan (*Claim para. 16; Walter no knowledge; USW no knowledge; 1<sup>st</sup> Affidavit of Miriam Dominguez, Exhibit C (Memo of Opinion re 1113/1114 Order)*).
114. CR: The 1113/1114 Order was issued following a hearing on December 15 and 16, 2015, of the US Bankruptcy Court (*USW response para. 5; 1<sup>st</sup> Affidavit of Miriam Dominguez, Exhibit C (Memo of Opinion re 1113/1114 Order), P. 1*).
115. CR: The US Debtors and the 1974 Plan participated in the US Bankruptcy Court hearing in respect of the 1113/1114 Order (*USW response para. 5; 1<sup>st</sup> Affidavit of Miriam Dominguez, Exhibit C (Memo of Opinion re 1113/1114 Order), P. 1*).
116. CR: None of the Walter Canada Group participated in the US Bankruptcy Court hearing in respect of the 1113/1114 Order (*USW response para. 5; 1<sup>st</sup> Affidavit of Miriam Dominguez, Exhibit C (Memo of Opinion re 1113/1114 Order), P. 1-2*).

117. CR: In granting the 1113/1114 Order, the US Bankruptcy Court did not consider any of the assets of the Petitioners or the Canadian operations in making the 1113/1114 Order. The US Bankruptcy Court did not treat the Petitioners as a controlled group with the Walter Energy US affiliates (*USW response para. 8; 1<sup>st</sup> Affidavit of Miriam Dominguez, Exhibit C (Memo of Opinion re 1113/1114 Order)*).
118. CR: On January 4, 2016, the 1974 Plan filed an Application Response in the Supreme Court of British Columbia stating:
- (a) At paragraph 10: “As set forth in the findings of fact in the 1113/1114 Order, Walter Energy US intends to seek approval of a stalking horse bid or superior bid at the scheduled sale hearing, which will require a rejection, and sale free and clear, of Walter Energy US’ obligations under the CBAs. If such sale is not approved or fails to close, Walter Energy US is expected to withdraw from the 1974 Plan”; and
- (b) At paragraph 11: “If the 1974 Plan’s claim remains a contingent claim, Walter Energy US has expressed its intention to cause the contingency – withdrawal from the 1974 Plan – to come to pass, the US Bankruptcy Court has confirmed and authorised the actions that Walter Energy US must take to cause the contingency to come to pass, and such actions are expected to take place in the very near term” (*Application Response of the 1974 Plan filed January 4, 2016*).
119. CR: On March 29, 2016, the 1974 Plan filed an Application Response in the Supreme Court of British Columbia stating at paragraph 7: “On February 16, 2016, the collective bargaining agreement was ratified by the UMWA, resulting in the withdrawal by the UMWA of its appeal of the 1113/1114 Order, pending closing of the sale to CA.



Accordingly, the appeal of the 1113/1114 Order is not proceeding with respect to the 1974 Plan” (*Application Response of the 1974 Plan filed March 29, 2016*).

***The US Bankruptcy Court Approves a Sale of the US Assets***

120. NK: During the Chapter 11 Proceedings, the US Debtors sought authority from the Bankruptcy Court to sell their US assets and operations free and clear of all liabilities, including any obligations to make ongoing monthly pension contributions to the 1974 Plan under the CBA (*Claim para. 63; Walter no knowledge; USW no knowledge*).
121. NK: On April 1, 2016, the US Debtors closed a sale of its core mining assets in the United States to Coal Acquisition, LLC (*Claim para. 70; Walter no knowledge; USW no knowledge*).
122. CR: The equity interests in the members of the Walter Canada Group and the assets held by the members of the Walter Canada Group are not part of the purchased assets under the credit bid (*1<sup>st</sup> Affidavit of William G. Harvey dated December 4, 2015, para. 6*).

Walter Canada Group's address for service:

**DLA Piper (Canada) LLP**

Suite 2800, Park Place

666 Burrard St

Vancouver, BC V6C 2Z7

Attention: Mary I.A. Buttery

and

**Osler, Hoskin & Harcourt LLP**

Box 50, 1 First Canadian Place

Toronto, Ontario M5X 1B8

Attention: Marc Wasserman

Fax number address for service (if any):

none

E-mail address for service (if any):

[mary.buttery@dlapiper.com](mailto:mary.buttery@dlapiper.com)

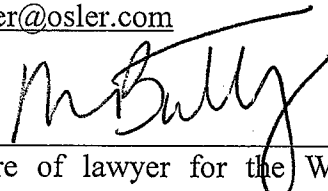
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Date: November 14, 2016



Signature of lawyer for the Walter Canada Group

DLA Piper (Canada) LLP

(Mary I.A. Buttery and Lance Williams)

and

Osler, Hoskin & Harcourt LLP

(Marc Wasserman, Mary Paterson and Patrick Riesterer)

**TAB 2**

Amended pursuant to Supreme Court Civil Rule 6-1(1)(a).

Original filed on August 26, 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 THE PLAN OF COMPROMISE AND ARRANGEMENT  
OF WALTER ENERGY CANADA HOLDINGS, INC., AND THE OTHER PETITIONERS  
LISTED ON SCHEDULE "A" TO THE INITIAL ORDER

PETITIONERS

**AMENDED NOTICE OF CIVIL CLAIM**

This notice of civil claim has been filed by the United Mine Workers of America 1974 Pension Plan and Trust (the "Claimant" or the "1974 Plan") for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the Claimant and the Service List maintained by the Monitor in the above-referenced proceedings (the "**Service List**").

If you intend to make a counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the plaintiff and on any new parties named in the Counterclaim.

**Time for Response to Civil Claim**

Pursuant to the Claims Process Order made in respect of the Petitioners in the above-referenced proceedings dated August 16, 2016 (the "**Claims Process Order**"), a

Response to Civil Claim must be filed and served on the Claimant and the Service List, no later than September 26, 2016.

## CLAIM OF THE CLAIMANT

### Part 1: STATEMENT OF FACTS

#### Parties

1. The United Mine Workers of America 1974 Pension Plan and Trust (the "**1974 Plan**") is a pension plan and irrevocable trust established in accordance with section 302(c)(5) of the *Labor Management Relations Act of 1947*, 29 U.S.C. § 186(c)(5). It has an address for service for the purpose of these proceedings at: 20<sup>th</sup> Floor, 250 Howe Street, Vancouver, BC V6C 3R8.
2. Walter Energy Canada Holdings, Inc. ("**Canada Holdings**") is a company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
3. Walter Canadian Coal ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
4. Wolverine Coal ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
5. Brule Coal ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
6. Cambrian Energybuild Holdings ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
7. Willow Creek Coal ULC is an unlimited liability company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
8. Pine Valley Coal Ltd. is a company incorporated under the laws of Alberta, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.

9. 0541237 BC Ltd. is a company incorporated under the laws of British Columbia, with a registered and records office at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
10. Willow Creek Coal Partnership is a partnership organized under the laws of British Columbia, with an address for service at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
11. Walter Canadian Coal Partnership is a partnership organized under the laws of British Columbia, with an address for service at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
12. Wolverine Coal Partnership is a partnership organized under the laws of British Columbia, with an address for service at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.
13. Brule Coal Partnership is a partnership organized under the laws of British Columbia, with an address for service at: 1600-925 West Georgia Street, Vancouver, BC V6C 3L2.

#### **Overview of the 1974 Plan's Claim**

14. The 1974 Plan's claim against the Petitioners arises under the *Employee Retirement Income Security Act of 1974, as amended ("ERISA")*, 29 U.S.C. §§ 1001 *et seq.*, as well as the United Mine Workers of America 1974 Pension Plan Document (the "Pension Document") and United Mine Workers of America 1974 Pension Trust Documents (the "Trust Document"), each effective December 6, 1974, and amended from time to time thereafter, and the CBA (as defined below). Pursuant thereto, each of the Petitioners, along with its U.S. affiliates, is jointly and severally liable to the 1974 Plan for the claimed pension withdrawal liability of Jim Walter Resources Inc. ("**Walter Resources**"), one of the Petitioners' U.S. affiliates.
15. The Petitioners and Walter Resources are wholly owned subsidiaries of Walter Energy Inc. ("**Walter Energy**"), a U.S. public corporation incorporated under the laws of Delaware. Walter Energy and its various affiliates, including the Petitioners, constitute a single global enterprise with integrated businesses.
16. The contribution obligations of contributing employers to the 1974 Plan, benefit levels provided to the Plan's beneficiaries and participants, and other substantive terms of the 1974 Plan, are established from time to time in collectively

bargained National Bituminous Coal Wage Agreements (each, an "NBCWA") between the United Mine Workers of America (the "UMWA") and the Bituminous Coal Operators' Association, Inc. (the "BCOA"). Until on or about January 11, 2016, Walter Resources was a contributing employer to the 1974 Plan under the terms of the 2011 NBCWA (the "CBA"). Previously, on December 28, 2016<sup>5</sup>, the United States Bankruptcy Court for the Northern District of Alabama (the "US Bankruptcy Court") entered an order authorizing Walter Energy and its affiliates set out in **Schedule "A"** hereto (the "US Debtors") to reject the CBA and declaring that Walter Resources had no further obligation to contribute to the 1974 Plan.

17. As of the effective date of such order (and in any event no later than the closing date of the sale of the US Debtors' core US mining assets on April 1, 2016), Walter Resources effected a withdrawal from the 1974 Plan. Such withdrawal triggered a fixed, non-contingent, joint and several liability of all entities that were at least 80% owned by Walter Energy, either directly or indirectly, as of the date of the withdrawal from the 1974 Plan. The Petitioners are among those entities.
18. Pursuant to a global settlement and a related effectuating order approved by the US Bankruptcy Court (the "**Global Settlement**"), the 1974 Plan has been determined to hold a claim for withdrawal liability against each of the US Debtors in an amount equal to approximately US\$904 million. The anticipated distribution to the 1974 Plan under the Global Settlement is expected to be *de minimis*. The Global Settlement does not release claims of unsecured creditors against the US Debtors or their affiliates
19. The 1974 Plan Claim (defined below) is a valid and enforceable debt as against Walter Resources, and each foreign affiliate which meets the test under ERISA for a member of the same "controlled group" (*i.e.*, each entity that is at least 80% owned, either directly or indirectly, by Walter Energy), which includes the Petitioners. The Petitioners are jointly and severally liable for the withdrawal liability.

#### **Walter Resources' Participation in the 1974 Plan**

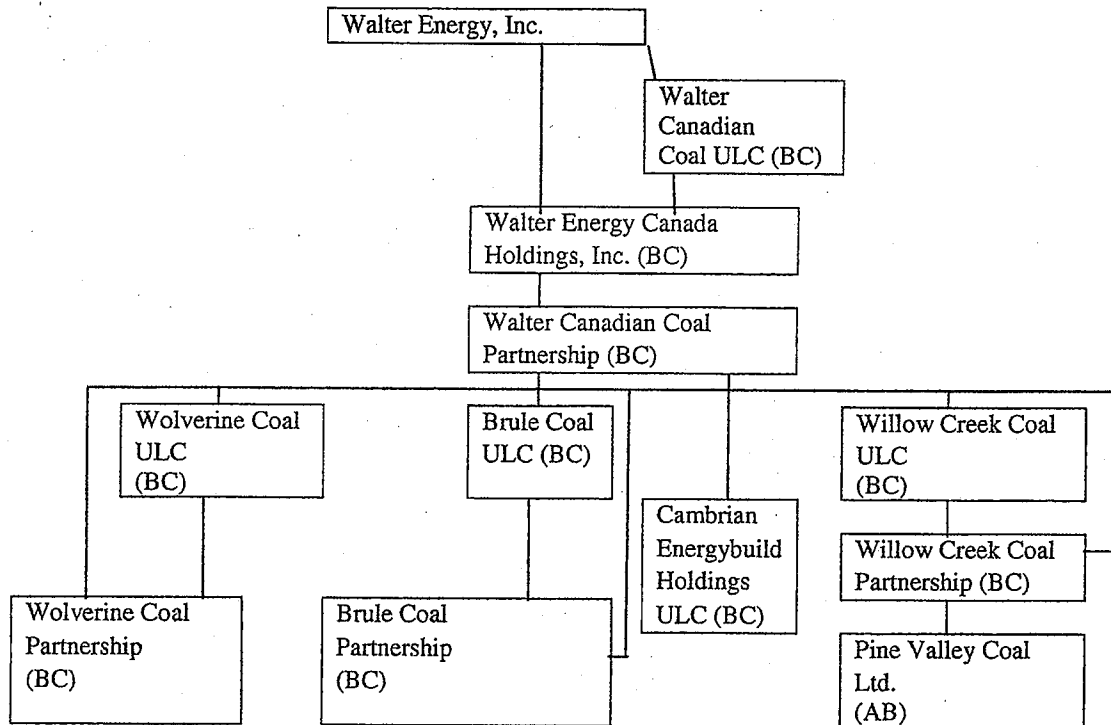
20. The 1974 Plan provides pension and death benefits to approximately 90,000 eligible beneficiaries who are retired or disabled coal miners and their eligible surviving spouses and dependents.
21. The 1974 Plan was established through collective bargaining in 1974 between the UMWA and the BCOA.

22. The 1974 Plan is a multiemployer, defined benefit pension plan under section 3(2), (3), (35), (37)(A) of ERISA, 29 U.S.C. § 1002(2), (3), (35), (37)(A).
23. Prior to its withdrawal from the 1974 Plan, Walter Resources (or a predecessor entity) had been a signatory to the 1978, 1981, 1984, 1988, 1993, 2002, 2007 and 2011 NBCWAs, and, pursuant thereto, had been a participating employer in the 1974 Plan.

**Common Ownership and Centralized Management of Walter Energy and Affiliates**

24. Walter Energy is a public company incorporated under the laws of Delaware and headquartered in Birmingham, Alabama.
25. Walter Resources is wholly owned by Walter Energy.
26. Walter Energy and its affiliates, including, Walter Resources, the other US Debtors and the Petitioners, comprise an integrated enterprise group.
27. The Petitioners comprise Canada Holdings and all entities owned directly or indirectly by Walter Energy that are incorporated or organized under the laws of Canada or its provinces.
28. Walter Canadian Coal Partnership is the Petitioners' principal operating entity.
29. Canada Holdings is the general partner of Walter Canadian Coal Partnership.
30. The principal assets of the Petitioners are the Brule, Willow Creek and Wolverine mines, located in northeast British Columbia, and the Petitioners' 50% interest in the Belcourt Saxon Coal Limited Partnership.
31. Walter Canadian Coal Partnership is a partner of each of the three B.C. partnerships that operate the Canadian mines: Wolverine Coal Partnership, Brule Coal Partnership and Willow Creek Coal Partnership.
32. Each of the partnerships has a separate B.C. unlimited liability company as its other partner.
33. The chart below shows the relationship between Walter Energy and the Petitioners:





34. At all material times, Walter Energy directed and controlled the affairs of the Petitioners centrally from its headquarters in Birmingham, Alabama (“Headquarters”).
35. Until these proceedings, Headquarters provided numerous administrative services to Walter Energy and its affiliates, including the Petitioners. Services included finance, tax, treasury, human resources, payroll, benefits and communications, information technology, legal, operations and health, safety and environment, among others.
36. Walter Energy and its US affiliates provided funding for the operational shortfalls and insurance costs of the Petitioners’ subsidiaries resident in the United Kingdom.
37. Under section 4001(b)(1) of ERISA, all entities that are at least 80% owned by the common parent corporation, Walter Energy, wherever incorporated, and all trades or businesses under common control with them, constitute a single employer participating in the 1974 Plan (each, an “Employer”). See, 26 U.S.C. § 414(b), (c), 26 C.F.R. § 1.414(c)-2(b), (c).

38. As a result, under ERISA, each of the Petitioners, whether or not a participating employer under the 1974 Plan and whether or not a signatory to the CBA, is an Employer.
39. In addition to any obligations under the CBA and the governing plan documents, Employers are legally subject to "withdrawal liability" accruing upon a partial or complete withdrawal from participation in the 1974 Plan by the participating employer.

**The Walter Energy's Expansion into Canada**

40. On March 9, 2011, Walter Energy incorporated Canada Holdings.
41. Canada Holdings is wholly owned by Walter Energy.
42. Canada Holdings was incorporated specifically to hold the shares of Western Coal Corp. ("**Western**") and its subsidiaries.
43. Western and its subsidiaries operated coal mines in British Columbia, the United Kingdom and the United States.
44. On April 1, 2011, Canada Holdings acquired all outstanding common shares of Western (the "**Western Acquisition**").
45. The Western Acquisition included the Brule, Wolverine and Willow Creek mines.
46. Total consideration paid by Walter Energy in respect of the Western Acquisition was approximately US\$3.7 billion.
47. Before 2011, Walter Energy did not have any operations or subsidiaries in Canada or the United Kingdom.
48. Concurrently, and in connection with entering into the arrangement agreement with Western, Walter Energy, Western, and Canada Holdings entered into a credit facility (the "**Credit Facility**") with Morgan Stanley Senior Funding, Inc., the Bank of Nova Scotia and the other lenders thereunder (the "**Bank Lenders**").
49. Pursuant to the Credit Facility, subject to the conditions set forth therein, the Bank Lenders committed to providing Walter Energy, Western and Canada Holdings with US\$2.725 billion of senior secured credit facilities.
50. Proceeds of the Credit Facility were used to fund the cash consideration, fees and expenses in connection with the Western Acquisition.

51. The majority of the funding Canada Holdings paid for the Western Acquisition was obtained under a hybrid debt transaction (the "**Hybrid Financing**").
52. As part of the Hybrid Financing, in substance, Walter Energy advanced approximately US\$2 billion in cash to Canada Holdings to enable Canada Holdings to purchase the Western Coal entities.
53. The Western Acquisition and the Hybrid Financing drained funds from Walter Energy and its US affiliates.
54. Walter Energy incurred significant debt in relation to the Western Acquisition.
55. At the time of the Western Acquisition, Walter Energy knew that it was an Employer.
56. At the time of the Western Acquisition, Walter Energy also knew that the 1974 Plan had an unfunded liability of greater than US\$4 billion.
57. By reason of the Western Acquisition, Walter Energy impaired its ability to satisfy obligations to the 1974 Plan.

#### **Chapter 11 Proceedings**

58. On July 15, 2015, the US Debtors commenced proceedings (the "**Chapter 11 Proceedings**") under Chapter 11 of Title 11 of the United States Code (the "**US Bankruptcy Code**").
59. On October 8, 2015, the 1974 Plan filed proofs of claim in the Chapter 11 Proceedings (the "**Proofs of Claim**").
60. Walter Energy's high debt load, much of which resulted from the Western Acquisition, was a material cause of the Chapter 11 Proceedings.
61. The Western Acquisition removed assets from the United States.
62. Since the Western Acquisition, funds from the US Debtors have gone to support the operations of the Petitioners' UK subsidiaries and insurance costs related thereto.
63. During the US Proceedings, the US Debtors sought authority from the Bankruptcy Court to sell their US assets and operations free and clear of all liabilities, including any obligations to make ongoing monthly pension contributions to the 1974 Plan under the CBA.

64. The US Debtors also sought authority to reject the CBA, which would terminate the requirement to make monthly pension contributions, giving rise to withdrawal liability against all Employers. .

#### **Withdrawal from the 1974 Plan**

65. On December 28, 2015, the US Debtors obtained a judgment from the Bankruptcy Court authorizing the US Debtors, pursuant to sections 1113 and 1114 of the US Bankruptcy Code, to reject the CBA and adjudging and decreeing the CBA rejected (the "1113/1114 Order").
66. The 1113/1114 Order had the effect of terminating Walter Resources' obligation to make monthly payments to the 1974 Plan.
67. Pursuant to section 4203 of ERISA, the termination of the obligation to make monthly pension plan payments constitutes a complete withdrawal from the 1974 Plan by Walter Resources.
68. Under section 4201 of ERISA, upon its withdrawal from a multiemployer pension plan, a previously contributing employer is immediately liable for its proportionate share of the employer's unfunded vested pension liabilities or "withdrawal liability".
69. Thus, by operation of ERISA, as of the effective date of the 1113/1114 Order, all Employers, including the Petitioners, are jointly and severally liable for Walter Resources' share of the 1974 Plan's unfunded vested pension liabilities or "withdrawal liability".
70. In addition, on April 1, 2016, the US Debtors closed a sale of its core mining assets to Coal Acquisition, LLC, which resulted in Walter Resources' permanently ceasing the operations covered by the 1974 Plan.
71. Cessation of covered operations constitutes a second independent trigger for withdrawal liability of the Employers.

#### **The 1974 Plan Claim**

72. As a result of Walter Resources' withdrawal from the 1974 Plan on December 28, 2016 and the determination of the 1974 Plan's claim pursuant to the Global Settlement, the 1974 Plan has an allowed withdrawal liability against each Employer in the amount of US\$904,367,132.00 (the "1974 Plan Claim").

73. The 1974 Plan Claim is a valid and enforceable debt as against Walter Energy, and each U.S. or foreign affiliate which meets the test under ERISA for a member of the same "controlled group", which includes the Petitioners.

**U.S. Has Closest and Most Real Connection to Walter Energy Canada's Withdrawal Liability**

74. The Pension Document was signed by the President of the BCOA and the International President of the UMWA in Washington, DC, on September 27, 2011.
75. The Pension Document provides that it is to be interpreted in accordance with ERISA and that withdrawal liability is to be calculated in accordance with ERISA.
76. The CBA provides that trusts and plans connected with the CBA must conform to the requirements of ERISA and other federal laws.
77. The Trust Document was signed by the President of the BCOA and the International President of the UMWA in Washington, DC on January 13, 1975, and amended and restated as of July 1, 2011.
78. The Trust Document provides that:
- (a) the 1974 Plan is to be construed, regulated and administered under the laws of the District of Columbia;
  - (b) the 1974 Plan will have its principal place of business in Washington, DC; and
  - (c) the trustees are authorized to do all acts necessary to comply with ERISA or other federal laws.
79. Walter Energy is incorporated under the laws of Delaware, is headquartered in Birmingham, Alabama, and did business in West Virginia and Alabama.
80. Walter Energy's board of directors and its management team operated out of Birmingham, Alabama.
81. Walter Resources is incorporated in Alabama and did business in Alabama.
82. Walter Resources' management team operated out of Birmingham, Alabama.
83. The 1974 Plan is resident in Washington, DC.

84. The trustees of the 1974 Plan are resident in the United States.
85. All participating employers in the 1974 Plan are resident in the United States.
86. The management team and key-decision makers of Canada Holdings operated out of the United States, U.S. law was the legal system with which they were most familiar, they expected U.S. law to govern the business they directed, and they were guided by U.S. law in their actions.
87. The management team and key-decision makers of the other Petitioners operated out of the United States, U.S. law was the legal system with which they were most familiar, they expected U.S. law to govern the business they directed, and they were guided by U.S. law in their actions.
88. After the date of the Western Acquisition, the President of Canada Holdings and the rest of the Canadian operations resided in and worked out of Birmingham, Alabama, in the United States.
89. Until his resignation, the Executive Vice President and Chief Financial Officer of Canada Holdings, Mr. William G. Harvey, was located in Birmingham, Alabama.
90. Mr. Harvey was also the Chief Financial Officer and Executive Vice President of Walter Energy.
91. Additional members of the Petitioner's management team resided in the U.S. and operated out of the Birmingham, Alabama, office.
92. Until his resignation, Danny L. Stickel, sole director of Canada Holdings, 0541237 B.C. Ltd., Walter Canadian Coal ULC, Wolverine Coal ULC, Cambrian Energybuild Holdings ULC, Willow Creek Coal ULC, and Brule Coal ULC, and one of two directors of Pine Valley Coal Ltd., resided in and worked out of the United States and held positions with Walter Energy.
93. At least four of the five officers of Cambrian Energybuild Holdings ULC lived in and worked out of Birmingham, Alabama.
94. At least one of the two officers of Canada Holdings, 0541237 B.C. Ltd., Walter Canadian Coal ULC, Wolverine Coal ULC, Willow Creek Coal ULC, and Brule Coal ULC lived in and worked out of Birmingham, Alabama.

95. The directors and officers of the Petitioners who resigned in 2016 did so after the US Bankruptcy Court had authorized the US Debtors to withdraw from the 1974 Plan.
96. Withdrawal from the 1974 Plan occurred in the United States. The liability created thereby occurred in the United States.
97. The 1113/1114 Order which authorized withdrawal from the 1974 Plan was made by the US Bankruptcy Court.
98. The directors of the Canadian entities were familiar with US law.
99. In relation to operations generally, and the withdrawal liability in particular, the laws and legal system of the United States informed and guided the perceptions and actions of the key players of all of the following:
  - (a) The 1974 Plan;
  - (b) Walter Energy;
  - (c) Walter Resources;
  - (d) Canada Holdings;
  - (e) Walter Canadian Coal ULC;
  - (f) Wolverine Coal ULC;
  - (g) Brule Coal ULC;
  - (h) Cambrian Energybuild Holdings ULC;
  - (i) Willow Creek Coal ULC;
  - (j) Pine Valley Coal, Ltd.; and
  - (k) 0541237 BC Ltd.
100. As the legal system that guided the key players and directing minds of the entities listed in paragraph 99, and the legal system with which these individuals are the are most familiar, U.S. law is the law that these individuals expected to govern their relationships and liabilities, including the 1974 Plan Claim for withdrawal liability.

101. The consolidated enterprise, which includes Walter Energy, Canada Holdings and their Canadian and US operations, benefits from the Petitioners' refusal to acknowledge the withdrawal liability.

102. Application of Canadian law works an injustice on the 1974 Plan because of the removal of assets out of reach of ERISA.

**Part 2: RELIEF SOUGHT**

103. Pursuant to the Claims Process Order made in these proceedings on August 16, 2016, a declaration that the 1974 Plan Claim in an amount of US\$904,367,132.00 is validly due and owing to the 1974 Plan on a joint and several basis by each of the Petitioners;

104. Pursuant to the Claims Process Order, a declaration that the 1974 Plan Claim in an amount of US\$904,367,132.00 is an Allowed Claim against each of the Petitioners.

**Part 3: LEGAL BASIS**

105. The 1974 Plan's claims against the Petitioners arise under:

- (a) the United Mine Workers of America 1974 Pension Plan and Trust Documents, effective December 6, 1974 and amended from time to time thereafter,
- (b) the CBA, and
- (c) the provisions of ERISA that provide for joint and several liability for certain liabilities in respect of the 1974 Plan among all entities under common ownership and control.

106. Having regard to the facts pleaded in paragraphs 74 to 102, in particular, and elsewhere in the Notice of Claim, the law of the United States is the proper law by which to determine the liability of the Petitioners for the 1974 Plan Claim for withdrawal liability.



Plaintiff's address for service: Dentons Canada LLP  
20<sup>th</sup> Floor, 250 Howe Street  
Vancouver, BC V6C 3R8  
Attention: John Sandrelli, Craig Dennis &  
Tevia Jeffries


Fax number address for service (if any): 604-683-5214

E-mail address for service (if any): [john.sandrelli@dentons.com](mailto:john.sandrelli@dentons.com)  
[craig.dennis@dentons.com](mailto:craig.dennis@dentons.com)  
[tevia.jeffries@dentons.com](mailto:tevia.jeffries@dentons.com)

Place of trial: Vancouver, BC

The address of the registry is: The Law Courts  
800 Smithe Street  
Vancouver, BC V6Z 2E1

Date: 26/August/2016

  
\_\_\_\_\_  
Signature of John Sandrelli  
Lawyer for 1974 Plan

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a List of Documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

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**APPENDIX**

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

[ ]

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- a class action
- maritime law
- aboriginal law
- constitutional law

- conflict of laws
- none of the above
- do not know

Part 4: [ ]

**SCHEDULE "A"**

**MEMBERS OF WALTER ENERGY GRANTED CHAPTER 11 PROTECTION**

Atlantic Development and Capital, LLC

Atlantic Leaseco, LLC

Blue Creek Coal Sales, Inc.

Blue Creek Energy, Inc.

J.W. Walter, Inc.

Jefferson Warrior Railroad Company, Inc.

Jim Walter Homes, LLC

Jim Walter Resources, Inc.

Maple Coal Co., LLC

Sloss-Sheffield Steel & Iron Company

SP Machine, Inc.

Taft Coal Sales & Associates, Inc.

Tuscaloosa Resources, Inc.

V Manufacturing Company

Walter Black Warrior Basin LLC

Walter Coke, Inc.

Walter Energy Holdings, LLC

Walter Energy, Inc.

Walter Exploration & Production LLC

Walter Home Improvement, Inc.

Walter Land Company

Walter Minerals, Inc.

Walter Natural Gas, LLC

**TAB 3**

Amended pursuant to Supreme Court Civil Rule 6-1(1)(a).  
Original filed on September 23, 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. 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

**AMENDED RESPONSE TO CIVIL CLAIM**

**Filed By United Mine Workers Of America 1974 Pension Plan And Trust  
(the "1974 Plan")**

**Response Filed by:** Petitioners (the "Walter Canada Group")

**PART 1: RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM FACTS**

**Division 1: The Walter Canada Group's Response to Alleged Facts**

1. The facts alleged in paragraphs 2 to 13, 24, 25, 27 to 29, 31, 32, 35, 40 to 48, 50 to 52, 54, 58, 79 and 5890 of part 1 of the amended notice of civil claim are admitted by the Walter Canada Group.
2. The facts and conclusions alleged in paragraphs 14, 15, 17, 19, 26, 30, 33, 34, 37 to 39, 49, 53, 57, 61, 69-69 and 71 to 7373, 86 to 89, 91 to 95, 98, 99(d)-(k), and 100 to 102 of part 1 of the amended notice of civil claim are denied in whole or in part by the Walter Canada Group.
3. The facts alleged in paragraphs 1, 16, 18, 20 to 23, 36, 55 to 56, 59 to 60, 62, 63 to 6868, 70, 74 to 78, 80 to 85, 96, 97, and 7099(a)-(c) of part 1 of the amended notice of civil claim are outside the knowledge of the Walter Canada Group.

## Division 2: The Walter Canada Group's Version of the Facts

### Procedural Matters

4. This response to civil claim has been prepared pursuant to the Claims Process Order pronounced by the Supreme Court of British Columbia on August 16, 2016 in the *Companies' Creditors Arrangement Act* proceedings of the Walter Canada Group (the "CCAA Proceedings") and responds to the allegations made by the 1974 Plan in its notice of civil claim dated and filed August 26, 2016.
5. The notice of civil claim filed by the 1974 Plan and this response is the court-approved mechanism pursuant to which the 1974 Plan must prove its claim in the CCAA Proceedings pursuant to the Claims Process Order.
6. Many of the paragraphs in the 1974 Plan's notice of civil claim are statements of legal conclusions or mixed statements of fact and legal conclusions regarding the Walter Canada Group's alleged liability under ERISA or otherwise and are denied as such.
7. For greater certainty, the Walter Canada Group denies any legal conclusions stated in the 1974 Plan's notice of civil claim.

### The Walter Canada Group's corporate structure and history

8. The corporate chart included at paragraph 33 of the 1974 Plan's notice of civil claim contains inaccuracies. Contrary to paragraph 33 of the 1974 Plan's notice of civil claim,
  - a. ~~(a)~~ Walter Canadian Coal ULC is a wholly owned subsidiary of Walter Energy Canada Holdings, Inc. and a partner of Walter Canadian Coal Partnership; and
  - b. ~~(b)~~ Walter Canadian Coal Partnership is one of two partners of Willow Creek Coal Partnership.
9. A corrected corporate chart is attached as Exhibit "A" to this response to civil claim.
10. Contrary to paragraph 34 of the 1974 Plan's notice of civil claim, Walter Energy, Inc. did not direct and did not control the affairs of the Walter Canada Group "at all material times".
11. At all relevant times, the entities that comprise the Walter Canada Group were operated as separate and independent legal entities from Walter Energy, Inc. and its US subsidiaries and affiliates (the "Walter US Group").
12. The Walter Canada Group operated in a different market than the entities that comprised the Walter US Group.
13. Unlike the Walter US Group, the Walter Canada Group operated in Canada and principally supplied coal to customers in Asia.
14. The Walter Group's public reporting divides the Walter Group into the Walter US Group and the Walter Non-US Group reporting segments.

15. Contrary to paragraph 30 of the 1974 Plan's notice of civil claim, the Walter Canada Group's principal assets are cash and its direct and indirect interest in the Walter Canada Group's subsidiaries in Wales (the "Walter UK Group").
16. The Walter Canada Group's Canadian mines and mining assets have been sold.
17. The 1974 Plan was established approximately 38 years before the Walter Canada Group was formed to acquire assets in Canada.
18. The 1974 Plan admits that it was underfunded by approximately US\$4 billion prior to the formation of the Walter Canada Group and prior to the acquisition of Western Coal Corp. and its affiliates (the "Western Acquisition").
19. The Walter Canada Group did not exist during the material times while the US\$4 billion 1974 Plan pension deficit was accruing.
20. The following members of the Walter Canada Group did not exist in July 2011 when the CBA and Plan Documents were last amended:
  - a. ~~(a)~~ Brule Coal ULC,
  - b. ~~(b)~~ Brule Coal Partnership,
  - c. ~~(c)~~ Cambrian Energybuild Holdings ULC
  - d. ~~(d)~~ Wolverine Coal ULC
  - e. ~~(e)~~ Wolverine Coal Partnership
  - f. ~~(f)~~ Walter Canadian Coal ULC
  - g. ~~(g)~~ Walter Canadian Coal Partnership

Walter US Group Chapter 11 proceedings and 1974 Plan claims

21. The Walter Canada Group has not been involved in the Walter US Group's Chapter 11 proceedings.
22. The Walter Canada Group observes that the references to December 28, 2016 in paragraphs 16 and 74 appear to be typographical errors.

Walter UK Group

23. Contrary to paragraphs 30 and 62 of the 1974 Plan's notice of civil claim, the Walter Canada Group is not aware of whether or not the Walter US Group funded the Walter UK Group's insurance costs.

The Walter Canada Group has no obligations to the 1974 Plan



24. The Walter Canada Group is not party to any collective bargaining agreement with the United Mine Workers of America, including any National Bituminous Coal Wage Agreements, (each a "CBA") or to any of the United Mine Workers of America Pension Plan and Trust Documents (the "Plan Documents").
25. The Walter Canada Group did not employ any of the beneficiaries of the 1974 Plan or any person who was a member of the United Mine Workers of America union.
26. The Walter Canada Group did not contribute to the 1974 Plan.
27. The Walter Canada Group did not have any obligation to contribute to the 1974 Plan.
28. The Walter Canada Group does not have assets or carry on business in the United States.

#### The Western Acquisition

29. Contrary to paragraphs 53, 57 and 61, the Walter Canada Group denies that the Western Acquisition "drained funds" from Walter Energy, Inc. and its US affiliates, impaired the Walter US Group's ability to meet any alleged liability to the 1974 Plan or "removed assets" from the United States.
30. Walter Energy, Inc. acquired assets valued at US\$3.7 billion for cash consideration drawn under the Credit Facility and for equity consideration consisting of common stock of Walter Energy, Inc.
31. Two thirds of the consideration paid for the Western Acquisition consisted of cash consideration.
32. One third of the consideration paid for the Western Acquisition consisted of common stock of Walter Energy, Inc.
33. Approximately US\$2.1 billion of the US\$2.725 billion drawn under the Credit Facility was used to fund the Western Acquisition.
34. Contrary to paragraph 50 of the 1974 Plan's notice of civil claim, the Credit Facility was also used to pay existing Walter US Group debt and to pay fees.
35. The acquired assets included the Walter Canada Group's Brule, Wolverine and Willow Creek mines, equipment and other assets; the Walter UK Group's Welsh mine, equipment and other assets; and certain mines, equipment and other assets located in the United States, including four mines, two properties and a number of other coal mining assets in West Virginia.
36. Walter Energy, Inc.'s Western Acquisition was publically announced and was completed pursuant to a plan of arrangement approved by the British Columbia Supreme Court in April 2011.
37. The Western Acquisition substantially increased Walter Energy, Inc.'s reserves available for future production, the majority of which was metallurgical coal, and created a diverse geographical footprint with strategic access to high growth steel-producing countries in both the Atlantic and Pacific basins.

38. The subsequent dramatic decline in coal prices was not anticipated at the time of the Western Acquisition.
39. At no time did the Walter Canada Group – which did not exist when Walter Energy, Inc. began the Western Acquisition – direct Walter Energy, Inc.’s investment or resource allocation decisions.
40. Contrary to paragraph 49 of the 1974 Plan’s notice of civil claim, the members of the Walter Canada Group were only liable for amounts drawn on the portion of the Credit Facility that consisted of the Canadian revolver.
41. Walter Energy Canada Holdings, Inc. and Western Coal Corp did not borrow and are not liable for US\$2.725 billion under the Credit Facility or for the US revolver portion of the Credit Facility.
42. The Walter Canada Group has no material liabilities under the Credit Facility.

Causes of insolvency

43. Contrary to paragraph 60 of the 1974 Plan’s notice of civil claim, the causes of the Walter US Group’s insolvency were manifold, and included the precipitous decline in coal prices, debt servicing obligations and crippling legacy labour costs such as costs associated with the CBA and the 1974 Plan.

**PART 2: RESPONSE TO RELIEF SOUGHT**

44. The Walter Canada Group opposes the relief sought in paragraphs 74 and 75 of the 1974 Plan’s notice of civil claim.
45. All claims of the 1974 Plan against the Walter Canada Group should be denied. No 1974 Plan claim should become Allowed Claims under the Claims Process Order.

**PART 3: LEGAL BASIS**

46. The Walter Canada Group is not a party to the CBA and has no liability for any claims arising in connection therewith.
47. The Walter Canada Group is not a party to the Plan Documents and has no liability for any claims arising in connection therewith.
48. The 1974 Plan’s claim against the Walter Canada Group appears to arise solely from the 1974 Plan’s interpretation of the United States’ *Employment Retirement Income Security Act of 1974* (“ERISA”).
49. The 1974 Plan is seeking to have this Court disregard the separate legal personality of the corporate members of the Walter Canada Group and other essential legal characteristics of corporations and partnerships that arise as a matter of British Columbia and Alberta law.
50. The relief sought by the 1974 Plan will effectively amalgamate all members of the Walter Canada Group with Walter Energy, Inc., Jim Walter Resources Inc. and their US subsidiaries

and affiliates for the benefit of the 1974 Plan and to the detriment of all the other creditors of the Walter Canada Group.

51. The provisions of ERISA that allegedly make the Walter Canada Group jointly and severally liable to the 1974 Plan for any liabilities of Walter Energy Inc. and Jim Walter Resources, Inc. do not apply in Canada for numerous reasons, including Canadian law and Canadian conflict of laws principles, United States law and conflict of law principles, and Canadian public policy.
52. The alleged US\$900 million 1974 Plan claim is many times higher than the claims of any known creditors of the Walter Canada Group. If the 1974 Plan claim is admitted as an Allowed Claim, there will be little to no recovery for the creditors of the Walter Canada Group.

Walter Canada Group's address for service:

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Vancouver, BC V6C 2Z7

Attention: Mary I.A. Buttery  
and

**Osler, Hoskin & Harcourt LLP**  
Box 50, 1 First Canadian Place  
Toronto, Ontario M5X 1B8  
Attention: Marc Wasserman

Fax number address for service (if any):

none

E-mail address for service (if any):

[mary.buttery@dlapiper.com](mailto:mary.buttery@dlapiper.com)

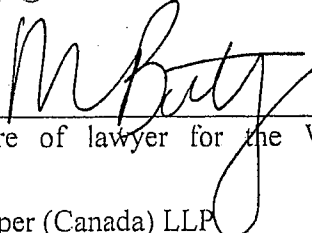
[lance.williams@dlapiper.com](mailto:lance.williams@dlapiper.com)

[mwasserman@osler.com](mailto:mwasserman@osler.com)

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Date: September 23, 2016

  
\_\_\_\_\_  
Signature of lawyer for the Walter Canada Group

DLA Piper (Canada) LLP  
(Mary I.A. Buttery and ~~H~~-Lance Williams)

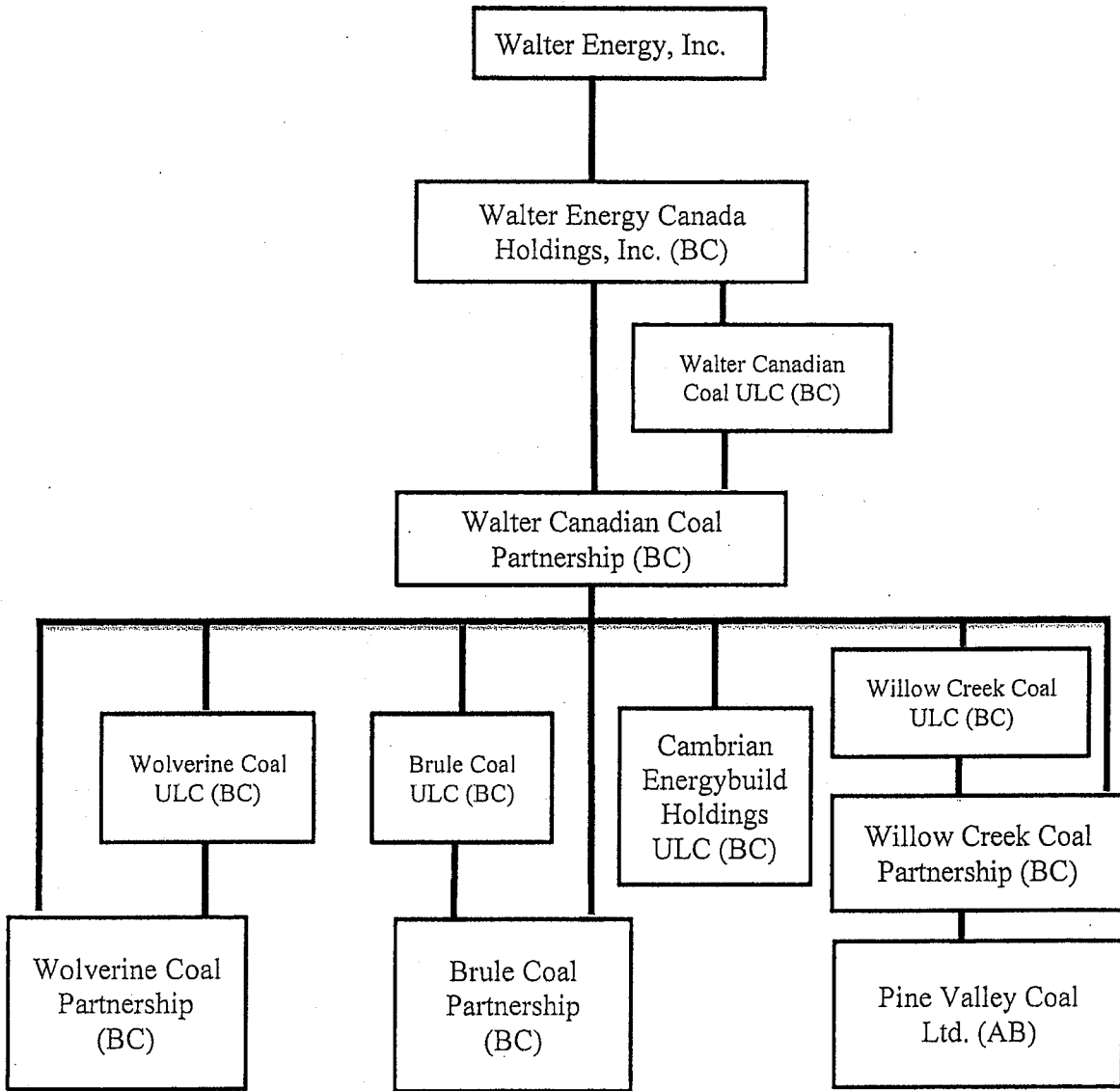
and

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

Rule 7-1(1) of the Supreme Court Civil Rules states:

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  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

Exhibit "A"



**TAB 4**

Amended per SC Rule 6-1(1)(a)  
Original Filed Sept 26, 2016  
BCSC File 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" TO THE INITIAL ORDER

PETITIONERS  
(APPLICANTS)

**AMENDED RESPONSE TO CIVIL CLAIM**

**Response Filed By: United Steelworkers, Local 1-424 (the "Respondent Steelworkers")**

**PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**

**Division 1 – Defendant's Response to Facts**

1. The facts alleged in paragraph(s) 2, 4 of Part 1 of the amended NOCC are admitted by the Respondent Steelworkers.
2. The facts alleged in paragraph(s) 34, 35, 69, 72, 73, 86, 87, 99-102 of Part 1 of the amended NOCC are denied by the Respondent Steelworkers.

3. The facts alleged in paragraph(s) 1, 3, 5 to 34, 36 - 68, 70, 71, 74-85, 88-98 of Part 1 of the amended NOCC are outside the knowledge of the Respondent Steelworkers.

### **Division 2 – Defendant’s Version of Facts**

4. Contrary to the allegations in paragraphs 34 and 35 of the NOCC, the operations of the Petitioners which involved the Respondent Steelworkers were directed, controlled, and supported in British Columbia through the Petitioners, not Walter Energy’s US affiliates.

#### **The 1113/1114 Order**

5. The 1113/1114 Order referenced in paragraph 65 of the NOCC was issued following a hearing on December 15 and 16, 2015 of the United States Bankruptcy Court for the Northern District of Alabama (the “US Bankruptcy Court”) in which the United Mine Workers of America participated. None of the Petitioners were named as debtors in that proceeding or participated.

6. The US Bankruptcy Court permitted Walter Energy US to withdraw from the collective bargaining agreement and participation 1974 Plan in the 1113/1114 Order after consideration of the interests of retirees and other stakeholders under the pension plan, the *Coal Industry Retiree Health Benefit Act* of 1992, and the *Bankruptcy Code* in order to allow operations to be sold as a going concern.

7. If the 1974 Plan cannot meet its obligations to provide basic retiree benefits, *ERISA*, 29 U.S. Code § 1431, requires the Pension Benefit Guaranty Corporation to provide financial assistance to the 1974 Plan to pay those benefits.

8. The judgement of the US Bankruptcy Court did not consider any of the assets of the Petitioners or the Canadian operations in making the 1113/1114 Order or treat the Petitioners as a controlled group with the Walter Energy US affiliates.



9. The Proof of Claim filed by the 1974 Plan and endorsed by the US Bankruptcy Court (the "US 1974 Plan Claim") which the 1974 Plan relies upon in this proceeding does not contain any reference to the Petitioners or Canadian enforceability of the Proof of Claim.

### **Division 3 – Additional Facts**

#### **The Steelworkers**

10. Walter Energy and Wolverine Coal Ltd. operating as Wolverine Coal Partnership ("Wolverine") own and operate an open pit coal mine near Tumbler Ridge BC (the "Wolverine Mine").

11. The Steelworkers is the certified bargaining agent for production and maintenance employees at the Wolverine Mine, representing approximately 308 employees.

12. The Steelworkers and Wolverine are parties to a collective agreement, with a term August 1, 2011 to July 31, 2015, (the "Collective Agreement") which continued until the sale of the Wolverine Mine in September 2016 and which now applies to the purchaser and the Steelworkers.

#### **Canadian control of Wolverine Mine**

13. The Steelworkers bargained the Collective Agreement with the management of Wolverine, who executed the Collective Agreement on its behalf: Hugh Kingwell, John Moberg and Michael Milner.

14. At all times during collective bargaining, the management of Wolverine represented that they had the authority to negotiate and conclude the Collective Agreement, not Walter Energy's US affiliates.

15. At no point did the management Wolverine represent that the Wolverine Mine operations or collective bargaining was controlled or directed by Walter Energy's US affiliates.

16. Collective bargaining was conducted based on Canadian market conditions, economics expectations and the comparable Canadian operations.

17. The Steelworkers has dealt with Wolverine management, primarily Hugh Kingwell, formerly Human Resources Director of Wolverine (now Human Resources Director of Walter Canadian Coal Partnership) in administering the Collective Agreement and dealing with grievances, not Walter Energy's US affiliates.

18. Administrative services at the Wolverine Mine which involve the Steelworkers including payroll, human resources, health and safety, benefits, and the environment were provided by Wolverine, or Walter Canadian Coal Partnership, not Walter Energy's US affiliates.

19. Mining operations and production at the Wolverine Mine were directed through Wolverine, not Walter Energy's US affiliates.

**The Steelworkers' Employee claims**

20. The Steelworkers and its members have significant claims (included in the class of "Employee Claims" in the Claims Process Order) against the Petitioners pursuant to the Collective Agreement, the *Labour Relations Code*, and the *Employment Standards Act*.

21. The combined value of the Steelworkers' Employee Claims not been precisely determined as the claim process is continuing, but the Monitor has estimated the claims may be approximately ten million dollars.

22. The claims of the Steelworkers include:

- a) damages for violation of section 54 of the *Labour Relations Code*, in failing to provide notice of shut down and layoff of the Wolverine Mine in April 2014;
- b) Severance Pay pursuant to Collective Agreement payable when approximately 294 employees laid off in April 2014 were not recalled within 2 years; and
- c) Group Termination Pay pursuant to the *Employment Standards Act* because laid off employees were not provided any working notice of termination.

23. The 1974 Plan Claim, if allowed at its claimed value of \$900 million US, will almost eliminate any recovery for the members of the Steelworkers' Employee Claims, including those arising under the Collective Agreement.

**PART 2: RESPONSE TO RELIEF SOUGHT**

24. The Respondent Steelworkers consents to the granting of none of the relief sought in Part 2 of the notice of civil claim.

25. The Respondent Steelworkers opposes the granting of all the relief sought in of Part 2 of the notice of civil claim.

26. In the alternative, if the 1974 Plan Claim is allowed, it must be in a separate class than the Employee Claims and only paid out after the Employee Claims are satisfied in full.

**PART 3 : LEGAL BASIS**

27. The *ERISA* does not have and was not intended to have extra-territorial effect outside of the United States.

28. The US 1974 Plan Claim was not intended have extra-territorial effect outside of the United States.

29. The 1974 Plan has not established that the Petitioners are a "controlled group" of Walter Energy's US affiliates pursuant to *ERISA*.

30. The definition of "controlled group" under *ERISA* cannot confer liability on Canadian entities which are not otherwise liable.

31. Allowing the 1974 Plan Claim will effectively eliminate the Employee Claims for the Steelworkers and is therefore not a reasonable or equitable plan.

32. The Severance Pay is payable pursuant to the Collective Agreement, negotiated through the collective bargaining process. If the 1974 Plan Claim is allowed and the payment of the 1974 Claim interferes with the Collective Agreement including the Severance Pay, such interference violates the Steelworkers' freedom of association pursuant to section 2(d) of the *Charter of Rights and Freedoms*.

33. Effectively eliminating the Steelworkers Employee Claims in order to satisfy a small percentage of a foreign claim is not demonstrably justified under section 1 of the *Charter of Rights and Freedoms*.

Address for Service of the Respondent Steelworkers :

Victory Square Law Office LLP

Attn: Craig Bavis

#710 - 777 Hornby Street

Vancouver, BC, V6Z 1S4

Phone. 604.602.7988

Fax. 604.684.8427

email: cbavis@vslo.ca

Date: Revised November 10, 2016

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Craig D. Bavis

Counsel for the Respondent Union

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

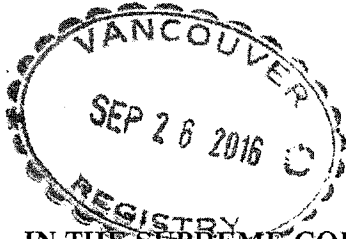
(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

**TAB 5**



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. 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

**RESPONSE TO CIVIL CLAIM**

**Filed By United Mine Workers of America 1974 Pension Plan and Trust  
(the "1974 Plan")**

Response Filed by: KPMG Inc. (the "Monitor")

**PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**

**Division 1 – Monitor's Response to Facts**

1. Given the position of the Monitor on the Notice of Civil Claim (the "**Claim**") filed by the 1974 Plan set out herein, the Monitor neither admits nor denies any of the facts alleged in the Claim.

## Division 2 – Monitor’s Version of Facts

### Overview

2. The Claim is filed by the 1974 Plan in the proceeding brought by the Petitioners pursuant to the *Companies’ Creditors Arrangement Act* (the “CCAA”, and the “CCAA Proceeding”), and is advanced pursuant to the terms of the Claims Process Order dated August 16, 2016 made by the Honourable Madam Justice Fitzpatrick.
3. Pursuant to paragraph 9 of the Claims Process Order, the Monitor is charged with responsibility for managing the claims process in the CCAA Proceeding, subject to the ultimate supervision of the Court:

The Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other Orders of the Court in the CCAA Proceeding, is hereby directed and empowered to implement the Claims Process set out herein, including the determination of Claims of Claimants and the referral of any Claim to the Court and to take such other actions and fulfill such other roles as are authorized by this Claims Process Order or incidental thereto.

4. Paragraphs 30 to 32 of the Claims Process Order provide the mechanism for the claim of the 1974 Plan to be adjudicated by the Court and not by the Monitor.
5. Accordingly, the Monitor takes no position with respect to the adjudication of the 1974 Plan. The Monitor instead offers its assistance to the Court and will seek directions from the Court as to what, if anything, the Monitor can do to assist the Court in the adjudication of the Claim.

### Division 3 – Additional Facts

6. The Monitor alleges no additional facts for these purposes at this time.

### **PART 2: RESPONSE TO RELIEF SOUGHT**

7. The Monitor take no position on the granting of the relief sought in Part 2 of the Notice of Civil Claim but reserves the right to take a position on whether this Court should allow the Claim if directed to do so by this Court.



**PART 3: LEGAL BASIS**

8. The Monitor takes no position on the legal basis asserted in Part 3 of the Notice of Civil Claim but reserves the right to take a position regarding the basis on which the 1974 Plan asserts the Claim if directed to do so by this Court.

Monitor's address for service:

McMillan LLP  
1500 - 1055 W. Georgia Street,  
P.O. Box 11117,  
Vancouver, BC V6E 4N7  
Attention: Peter J. Reardon

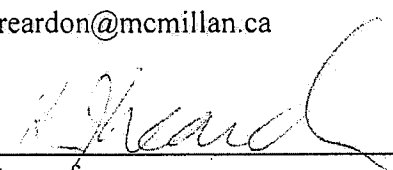
Fax number address for service (if any):

(604) 685-7084

E-mail address for service (if any):

Peter.reardon@mcmillan.ca

Date: 26/September/2016

  
\_\_\_\_\_  
Signature of  
 plaintiff  lawyer for the Monitor,  
KPMG Inc.  
Peter J. Reardon

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

- (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
- (ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

No. S-1510120  
VANCOUVER REGISTRY

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**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

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**RESPONSE TO CIVIL CLAIM**

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**PETER J. REARDON**  
McMillan LLP  
1500 – 1055 W. Georgia Street  
Box 11117  
Vancouver, B.C. V6E 4N7  
(604) 689 9111

**TAB 6**

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 THE PLAN OF COMPROMISE AND ARRANGEMENT  
OF WALTER ENERGY CANADA HOLDINGS, INC., AND THE OTHER PETITIONERS  
LISTED ON SCHEDULE "A" TO THE INITIAL ORDER

PETITIONERS

REPLY

**Filed by:** The claimant, the United Mine Workers of America 1974 Pension Plan  
and Trust (the "**Claimant**" or the "**1974 Plan**")


**In reply to:** The Response to Civil Claim of the Civil Claim of the United Steelworkers,  
Local 1-424 (the "**Respondent Steelworkers**")

1. In this reply, capitalized terms shall have the meanings ascribed to them in the Notice of Civil Claim.
2. In specific reply to paragraph 7 of Division 2 of Part 1 of the Response to Civil Claim of the Respondent Steelworkers, the Pension Benefit Guaranty Corporation (the "**PBGC**") is required to assist a multi-employer pension plan to provide basic retiree benefits (a) only if the pension plan is insolvent, (b) only to a limited extent, and (c) only if the PBGC has sufficient assets to provide even limited assistance.
3. The 1974 Plan is in financial distress and had unfunded vested benefits of approximately US\$5.8 billion as of July 1, 2015.
4. Any financial assistance that the PBGC may provide in the future to the 1974 Plan will be limited to the PBGC guaranteed level of benefits. The PBGC guaranteed level of benefits is much lower than the level of benefits promised to participants in the 1974 Plan in their collective bargaining agreements.

5. Further, as the PBGC has informed the United States Congress, when the 1974 Plan becomes insolvent, the PBGC will be able to provide financial assistance at the PBGC guaranteed level of benefits for only one to three years.

6. Thus, any financial assistance that the PBGC may in the future provide to the 1974 Plan will not make the 1974 Plan or its beneficiaries whole.

Date: October 5, 2016

  
\_\_\_\_\_  
Signature of Craig Dennis  
Lawyer for filing party

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a List of Documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

**TAB 6.1**



Amended per SC Rule 6-1(1)(a)  
Original Filed Sept 26, 2016  
BCSC File 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" TO THE INITIAL ORDER

PETITIONERS  
(APPLICANTS)

**SECOND AMENDED RESPONSE TO CIVIL CLAIM**

**Response Filed By: United Steelworkers, Local 1-424 (the "Respondent Steelworkers")**

**PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**

**Division 1 – Defendant's Response to Facts**

1. The facts alleged in paragraph(s) 2, 4 of Part 1 of the amended NOCC are admitted by the Respondent Steelworkers.
2. The facts alleged in paragraph(s) 34, 35, 69, 72, 73, 86, 87, 99-102 of Part 1 of the amended NOCC are denied by the Respondent Steelworkers.

3. The facts alleged in paragraph(s) 1, 3, 5 to 34, 36 - 68, 70, 71, 74-85, 88-98 of Part 1 of the amended NOCC are outside the knowledge of the Respondent Steelworkers.

### **Division 2 – Defendant’s Version of Facts**

4. Contrary to the allegations in paragraphs 34 and 35 of the NOCC, the operations of the Petitioners which involved the Respondent Steelworkers were directed, controlled, and supported in British Columbia through the Petitioners, not Walter Energy’s US affiliates.

#### **The 1113/1114 Order**

5. The 1113/1114 Order referenced in paragraph 65 of the NOCC was issued following a hearing on December 15 and 16, 2015 of the United States Bankruptcy Court for the Northern District of Alabama (the “US Bankruptcy Court”) in which the United Mine Workers of America participated. None of the Petitioners were named as debtors in that proceeding or participated.

6. The US Bankruptcy Court permitted Walter Energy US to withdraw from the collective bargaining agreement and participation 1974 Plan in the 1113/1114 Order after consideration of the interests of retirees and other stakeholders under the pension plan, the *Coal Industry Retiree Health Benefit Act* of 1992, and the *Bankruptcy Code* in order to allow operations to be sold as a going concern.

7. If the 1974 Plan cannot meet its obligations to provide basic retiree benefits, *ERISA*, 29 U.S. Code § 1431, requires the Pension Benefit Guaranty Corporation to provide financial assistance to the 1974 Plan to pay those benefits.

8. The judgement of the US Bankruptcy Court did not consider any of the assets of the Petitioners or the Canadian operations in making the 1113/1114 Order or treat the Petitioners as a controlled group with the Walter Energy US affiliates.



9. The Proof of Claim filed by the 1974 Plan and endorsed by the US Bankruptcy Court (the "US 1974 Plan Claim") which the 1974 Plan relies upon in this proceeding does not contain any reference to the Petitioners or Canadian enforceability of the Proof of Claim.

### **Division 3 – Additional Facts**

#### **The Steelworkers**

10. Walter Energy and Wolverine Coal Ltd. operating as Wolverine Coal Partnership ("Wolverine") own and operate an open pit coal mine near Tumbler Ridge BC (the "Wolverine Mine").

11. The Steelworkers is the certified bargaining agent for production and maintenance employees at the Wolverine Mine, representing approximately 308 employees.

12. The Steelworkers and Wolverine are parties to a collective agreement, with a term August 1, 2011 to July 31, 2015, (the "Collective Agreement") which continued until the sale of the Wolverine Mine in September 2016 and which now applies to the purchaser and the Steelworkers.

#### **Canadian control of Wolverine Mine**

13. The Steelworkers bargained the Collective Agreement with the management of Wolverine, who executed the Collective Agreement on its behalf: Hugh Kingwell, John Moberg and Michael Milner.

14. At all times during collective bargaining, the management of Wolverine represented that they had the authority to negotiate and conclude the Collective Agreement, not Walter Energy's US affiliates.

15. At no point did the management Wolverine represent that the Wolverine Mine operations or collective bargaining was controlled or directed by Walter Energy's US affiliates.

16. Collective bargaining was conducted based on Canadian market conditions, economics expectations and the comparable Canadian operations.

17. The Steelworkers has dealt with Wolverine management, primarily Hugh Kingwell, formerly Human Resources Director of Wolverine (now Human Resources Director of Walter Canadian Coal Partnership) in administering the Collective Agreement and dealing with grievances, not Walter Energy's US affiliates.

18. Administrative services at the Wolverine Mine which involve the Steelworkers including payroll, human resources, health and safety, benefits, and the environment were provided by Wolverine, or Walter Canadian Coal Partnership, not Walter Energy's US affiliates.

19. Mining operations and production at the Wolverine Mine were directed through Wolverine, not Walter Energy's US affiliates.

#### **The Steelworkers' Employee claims**

20. The Steelworkers and its members have significant claims (included in the class of "Employee Claims" in the Claims Process Order) against the Petitioners pursuant to the Collective Agreement, the *Labour Relations Code*, and the *Employment Standards Act*.

21. The combined value of the Steelworkers' Employee Claims not been precisely determined as the claim process is continuing, but the Monitor has estimated the claims may be approximately ten million dollars.

22. The claims of the Steelworkers include:
- a) damages for violation of section 54 of the *Labour Relations Code*, in failing to provide notice of shut down and layoff of the Wolverine Mine in April 2014;
  - b) Severance Pay pursuant to Collective Agreement payable when approximately 294 employees laid off in April 2014 were not recalled within 2 years; and
  - c) Group Termination Pay pursuant to the *Employment Standards Act* because laid off employees were not provided any working notice of termination.
23. The 1974 Plan Claim, if allowed at its claimed value of \$900 million US, will almost eliminate any recovery for the members of the Steelworkers' Employee Claims, including those arising under the Collective Agreement.

## **PART 2: RESPONSE TO RELIEF SOUGHT**

24. The Respondent Steelworkers consents to the granting of none of the relief sought in Part 2 of the notice of civil claim.
25. The Respondent Steelworkers opposes the granting of all the relief sought in of Part 2 of the notice of civil claim.
26. In the alternative, if the 1974 Plan Claim is allowed, it must be in a separate class than the Employee Claims and only paid out after the Employee Claims are satisfied in full.

**PART 3 : LEGAL BASIS**

27. The *ERISA* does not have and was not intended to have extra-territorial effect outside of the United States.

28. The US 1974 Plan Claim was not intended have extra-territorial effect outside of the United States.

29. The 1974 Plan has not established that the Petitioners are a “controlled group” of Walter Energy’s US affiliates pursuant to *ERISA*.

30. The definition of ‘controlled group’ under *ERISA* cannot confer liability on Canadian entities which are not otherwise liable.

31. Allowing the 1974 Plan Claim will effectively eliminate the Employee Claims for the Steelworkers and is therefore not a reasonable or equitable plan.

32. ~~The Severance Pay is payable pursuant to the Collective Agreement, negotiated through the collective bargaining process. If the 1974 Plan Claim is allowed and the payment of the 1974 Claim interferes with the Collective Agreement including the Severance Pay, such interference violates the Steelworkers’ freedom of association pursuant to section 2(d) of the *Charter of Rights and Freedoms*. The Steelworkers’ Severance Pay claim is payable pursuant to the Collective Agreement, negotiated through the collective bargaining process, recognized as an activity protected by the freedom of association guarantee in section 2(d) of the *Charter of Rights and Freedoms*.~~

33. ~~Effectively eliminating the Steelworkers Employee Claims in order to satisfy a small percentage of a foreign claim is not demonstrably justified under section 1 of the *Charter of Rights and Freedoms*. Canadian Courts must interpret and apply the *Companies Creditor’s Arrangement*~~

Act consistent with Charter values, which include recognizing and prioritizing Collective Agreement claims above foreign judgements, such as the 1974 Plan Claim.

Address for Service of the Respondent Steelworkers :

Victory Square Law Office LLP

Attn: Craig Bavis

#710 - 777 Hornby Street

Vancouver, BC, V6Z 1S4

Phone. 604.602.7988

Fax. 604.684.8427

email: cbavis@vslo.ca

Date: Revised November 10, 2016



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Craig D. Bavis

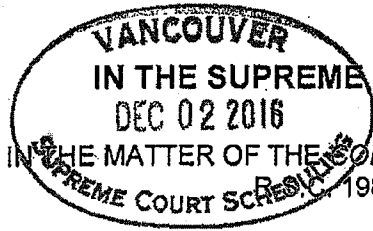
Counsel for the Respondent Union

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**TAB 6.2**

NO. S-1510120  
VANCOUVER REGISTRY



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT  
S.B.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**

**Name of applicant:** United Mine Workers of America 1974 Pension Plan and Trust  
(the "applicant" or "1974 Plan")

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

TAKE NOTICE that an application will be made by the applicant to the Honourable  
Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, British  
Columbia on 9/Jan/2017 at 10:00 a.m. for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An order dismissing the Petitioners' Summary Trial Application, returnable  
January 9, 2017, with costs payable to the applicant.
2. Such further relief as may be required in the circumstances and this Honourable  
Court deems just.

**Part 2: FACTUAL BASIS**

3. This notice of application is delivered in accordance with the case plan order  
made in these proceedings and entered November 14, 2016 (the "Case Plan Order").

4. The 1974 Plan relies on the facts set out in Part 1 of the 1974 Plan's Amended Notice of Civil Claim filed November 9, 2016 (the "**Amended Notice of Civil Claim**"). Capitalized terms used but not defined herein have the meaning ascribed to them in the Amended Notice of Civil Claim.

#### Overview of Application

5. Pursuant to the Case Plan Order, the Petitioners have brought a notice of application for summary trial of four issues described by the Petitioners as "preliminary issues" (the "**Summary Trial Application**").

6. The Petitioners have staked this summary trial on their contention that there is a threshold legal issue that can be adjudicated that does not involve facts. The Petitioners have since resisted every attempt by the 1974 Plan to obtain any form of pre-trial discovery.

7. As a result, the Court can only adjudicate the preliminary issues if the Petitioners are right that facts do not matter. The Petitioners are not right. The resolution of the preliminary issues raised in the Summary Trial Application involves matters of disputed fact that can only be properly and fairly adjudicated after the 1974 Plan has had an opportunity to obtain pre-trial discovery.

8. In particular, the parties are in disagreement as to the degree of integration between the Petitioners and their affiliates in the U.S. and the U.K. (together with the Petitioners, the "**Walter Group**"). An understanding of the Walter Group's operations and the relationships between the entities in the Walter Group is central to resolving the 1974 Plan Claim. It is not enough for the Petitioners to simply admit certain facts the 1974 Plan has plead without admitting others the 1974 Plan says are relevant to the adjudication of the issues.

9. Evidence of the Walter Group's operations must come out of the mouths and documents of the Walter Group. The 1974 Plan has made consistent and repeated requests of the Petitioners to obtain necessary pre-trial document discovery. The Petitioners have not responded to these requests. To date, the Petitioners have not disclosed any of the requested documents to the 1974 Plan.

10. The 1974 Plan has also requested to examine for discovery Mr. William G. Harvey, the former Executive Vice President and Chief Financial Officer of Walter Energy Canada Holdings, Inc. ("**Canada Holdings**"), the parent company of the rest of the Petitioners. Simultaneously Mr. Harvey was also the Chief Financial Officer and Executive Vice President of Walter Energy, Inc., itself the parent company of Canada Holdings.



11. Mr. Harvey is a key witness in this case and has critical knowledge regarding the Walter Group's global operations and the degree of integration amongst all members of the Walter Group, including the Petitioners. Indeed, the Petitioners rely on an affidavit of Mr. Harvey in this summary trial proceeding.

12. The Petitioners have not responded to the 1974 Plan's request to examine for discovery Mr. Harvey. To date, the Petitioners have not consented to allow the 1974 Plan to examine Mr. Harvey.

13. The 1974's Plan's inability to obtain necessary pre-trial discovery has impeded its ability to uncover all of the evidence that is important to its case and the issues raised in the Summary Trial Application. Absent the requested document discovery and examination for discovery, the 1974 Plan will be unable to meet the Petitioners' Summary Trial Application and the Court will be unable to find the facts necessary to adjudicate the preliminary issues raised therein. It is unjust to proceed with this summary trial application without permitting the 1974 Plan to develop its case fully through discovery.

14. Further, the Petitioners' Summary Trial Application raises concerns about "litigating in slices" as it does not seek to resolve the 1974 Plan Claim finally. If the Court were to find in favour of the 1974 Plan on each of the four preliminary issues raised in the Summary Trial Application, the 1974 Plan would still have to prove its claim.

15. In the circumstances of this case, the preliminary issues raised by the Petitioners' application are not suitable for disposition by summary trial and will not assist in the efficient resolution of the proceeding.

16. The Petitioners' Summary Trial Application should be dismissed.

#### Summary of the 1974 Plan Claim

17. The 1974 Plan Claim against the Petitioners arises under the *Employee Retirement Income Security Act of 1974, as amended*, 29 U.S.C. §§ 1001 *et seq.* ("ERISA"), as well as the United Mine Workers of America 1974 Pension Plan Document and United Mine Workers of America 1974 Pension Trust Documents, each effective December 6, 1974, and amended from time to time thereafter, and the CBA (as defined in the Amended Notice of Civil Claim).

18. The 1974 Plan alleges that pursuant thereto, each of the Petitioners, along with its U.S. affiliates, is jointly and severally liable to the 1974 Plan for the claimed pension withdrawal liability of Jim Walter Resources Inc. ("**Walter Resources**"), one of the Petitioners' U.S. affiliates.

19. Pursuant to a global settlement and a related effectuating order approved by the U.S. Bankruptcy Court (the "**Global Settlement**"), the 1974 Plan has been determined to hold a claim for withdrawal liability against each of the U.S. entities in the Walter Group (the "**U.S. Entities**") in an amount equal to approximately US\$904 million. The anticipated distribution to the 1974 Plan under the Global Settlement is expected to be *de minimis*. The Global Settlement does not release claims of unsecured creditors against the U.S. Entities or their affiliates.

20. The 1974 Plan alleges that the 1974 Plan Claim is a valid and enforceable debt as against Walter Resources, and each foreign affiliate which meets the test under ERISA for a member of the same "controlled group" (*i.e.* each entity that is at least 80% owned, either directly or indirectly, by Walter Energy), which includes the Petitioners.

Notice of Application for Summary Trial

21. The Petitioners' Summary Trial Application outlines the following preliminary issues which the Petitioners assert are appropriate for summary disposition:

- (a) Under Canadian conflict of laws rules, is the 1974 Plan's claim against the Petitioners governed by Canadian substantive law or United States substantive law (including ERISA)?
- (b) If the 1974 Plan's claim against the Petitioners 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 Petitioners 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 Petitioners 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?

22. The Petitioners have filed their evidence for the Summary Trial Application. There are a number of relevant facts pleaded in the Amended Notice of Civil Claim that have not been admitted by the Petitioners, including:

- (a) Walter Energy and its various affiliates, including the Petitioners, constitute a single global enterprise with integrated businesses (para. 15);

- (b) The management team and key-decision makers of Canada Holdings and the other Petitioners operated out of the United States, U.S. law was the legal system with which they were most familiar, they expected U.S. law to govern the business they directed, and they were guided by U.S. law in their actions (paras. 86-87);
- (c) After the date of the Western Acquisition, the President of Canada Holdings and each of its Canadian subsidiaries resided in and worked out of Birmingham, Alabama, in the United States (para. 88);
- (d) Additional members of the Petitioners' management team resided in the U.S. and operated out of the Birmingham, Alabama office (para. 91);
- (e) Until his resignation, Danny L. Stickel, sole director of Canada Holdings, 0541237 B.C. Ltd., Walter Canadian Coal ULC, Wolverine Coal ULC, Cambrian Energybuild Holdings ULC, Willow Creek Coal ULC, and Brule Coal ULC, and one of two directors of Pine Valley Coal Ltd., resided in and worked out of the United States and held positions with Walter Energy (para. 92);
- (f) At least four of the five officers of Cambrian Energybuild Holdings ULC lived in and worked out of Birmingham, Alabama (para. 93);
- (g) At least one of the two officers of Canada Holdings, 0541237 B.C. Ltd., Walter Canadian Coal ULC, Wolverine Coal ULC, Willow Creek Coal ULC, and Brule Coal ULC lived in and worked out of Birmingham, Alabama (para. 94);
- (h) Withdrawal from the 1974 Plan occurred in the United States. The liability created thereby occurred in the United States (para. 96);
- (i) The directors of the Canadian entities were familiar with U.S. law (para. 98);
- (j) In relation to operations generally, and the withdrawal liability in particular, the laws and legal system of the United States informed and guided the perceptions and actions of the key players of all of the following: the 1974 Plan; Walter Energy; Walter Resources; Canada Holdings; Walter Canadian Coal ULC; Wolverine Coal ULC; Brule Coal ULC; Cambrian Energybuild Holdings ULC; Willow Creek Coal ULC; Pine Valley Coal, Ltd.; and 0541237 BC Ltd. (para. 99);
- (k) As the legal system that guided the key players and directing minds of the entities listed in paragraph 99, and the legal system with which these individuals are the most familiar, U.S. law is the law that these individuals expected to govern their relationships and liabilities, including the 1974 Plan Claim for withdrawal liability (para. 100); and

- (l) The consolidated enterprise, which includes Walter Energy, Canada Holdings and their Canadian and U.S. operations, benefits from the Petitioners' refusal to acknowledge the withdrawal liability (para. 101);

(the "Unadmitted Facts").

#### The Abrams Report

23. The Petitioners filed an expert report of Marc Abrams (the "**Abrams Report**"). Mr. Abrams was asked to address the second question arising in the Petitioners' Summary Trial Application:

If 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 United States substantive law (including ERISA), as a matter of United States law does controlled group liability for withdrawal liability related to a multiemployer pension plan under ERISA extend extraterritorially?

24. Mr. Abrams outlined a two-part test for determining whether the presumption against extraterritoriality applies in a particular case. According to Mr. Abrams, the second step involves looking at whether conduct relevant to the statute's focus occurred in the United States. Mr. Abrams concedes that if the conduct relevant to the statute's focus primarily occurred in the United States, no issue of extraterritoriality would even arise.

#### 1974 Plan's Repeated Requests for Discovery

25. The 1974 Plan has made repeated requests to obtain discovery from the Petitioners.

26. On October 3, 2016, the 1974 Plan prepared an initial list of discovery requests based on facts put in issue by the pleadings and requested that the Petitioners produce documents responsive to an itemized list of categories. The Petitioners did not respond to this request.

27. On October 4, 2016, the 1974 Plan sent an email to the Petitioners outlining an option for a summary trial preceded by document discovery and examination for discovery. Rather than a summary trial, the Petitioners proposed a determination of points of law governed by Rule 9-4 that would not require discovery.

28. On October 26, 2016, the parties appeared before this Court pursuant to a direction made on August 16, 2016 to determine the procedural vehicle that would be used to determine the issues raised by the 1974 Plan Claim (the "**October Appearance**").

29. At the October Appearance, the 1974 Plan reiterated its position that the 1974 Plan Claim should be determined by summary trial, on the earliest hearing date that would accommodate necessary pre-trial discovery. The Petitioners submitted that discovery was not necessarily required for a threshold issue that arose in the case (being the extraterritorial applicability of ERISA).

30. The issues raised in the Petitioners' Summary Trial Application filed after the October Appearance go beyond what the Petitioners stated would be before the Court.

31. On November 22, 2016, the 1974 Plan again requested that the Petitioners disclose documents related to discovery categories itemized by the 1974 Plan. The 1974 Plan further requested to examine for discovery Mr. Harvey.

32. The 1974 Plan subsequently brought an application seeking an order for targeted document discovery to allow it to meet the preliminary issues raised by the Petitioners' Summary Trial Application. The Petitioners opposed the 1974 Plan's application.

33. To date, the Petitioners have not disclosed any of the requested documents to the 1974 Plan or consented to allow the 1974 Plan to examine for discovery Mr. Harvey.

### **Part 3: LEGAL BASIS**

#### The Petitioners' Notice of Application is Unsuitable for Summary Trial

34. On an application heard before or at the same time as the hearing of a Summary Trial Application, the court may dismiss the Summary Trial Application where:

- (i) the issues raised by the Summary Trial Application are not suitable for disposition under Rule 9-7, or
- (ii) the Summary Trial Application will not assist in the efficient resolution of the proceeding.

#### ***Supreme Court Civil Rules, Rule 9-7(11)***

35. Further, on hearing an application for summary trial, the court may dismiss the application if the court is unable, on the whole of the evidence, to find the facts necessary to decide the issues of fact or law, or the court is of the opinion that it would be unjust to decide the issues on the application.

#### ***Supreme Court Civil Rules, Rule 9-7(15)***

Discovery is required for the fair adjudication of the issues

36. The Petitioners have staked their Summary Trial Application on the contention that no facts are required to determine the preliminary issues raised in the application. In spite of this assertion, the Petitioners seek to rely on, amongst other things, a 35 page, 160 paragraph affidavit of Mr. Harvey and a 28-page document titled "Statement of Uncontested Facts" that lists 122 "facts", many of which are disputed. Indeed, the Petitioners' own expert says facts matter, as Mr. Abrams claims that the ultimate determination of the extraterritoriality issue depends upon whether the conduct relevant to ERISA's focus primarily occurred in the United States.

37. The Petitioners cannot have it both ways. They cannot say that no facts are required for this Court to adjudicate the preliminary issues in their Summary Trial Application while simultaneously seeking to rely on voluminous evidentiary materials and an expert report that says facts matter.

38. The Petitioners have repeatedly denied the 1974 Plan any form of pre-trial discovery. As a result, the 1974 Plan is unable to prove the facts it says are relevant to the preliminary issues raised in the Petitioners' Summary Trial Application and unable to challenge the untested "facts" the Petitioners say are relevant.

39. The Petitioners refusal to grant any discovery in this case leaves it unsuitable for determination by summary trial. It is also wholly unfair. The adversarial system is founded on the conception that the parties to a lawsuit will bring forward all relevant evidence available to support their case and will present their case in its best light. When the issues in dispute do not permit a litigant to rely solely on its own evidence, it may adduce necessary evidence from the opponent.

***Mayer v. Mayer, 2012 BCCA 77 at paras. 78-79***

40. Litigants do not always have access to all of the relevant evidence bearing on the issues raised. Often, relevant documents are in the sole possession or control of their opponents. Documentary discovery requires the opponents to disclose such documents and enables the litigants to use them in support of their case.

***Mayer at para. 79***

41. Further, oral discovery offers the opportunity to learn of relevant evidence otherwise not known to the examining party, to obtain helpful admissions, and to explore the strengths and weaknesses of the opponent's case. Without the ability to ask questions of opposing witnesses, a party's opportunity to effectively present its case and to correct or contradict any relevant statement prejudicial to its view is significantly diminished.

**Mayer at paras. 79-82**

42. Where there is a real possibility that a party can bolster its claim by discovery of documents and examinations for discovery on triable issues before the court, it would be unjust to decide the issues on a Summary Trial Application.

**Mayer at para. 83; *Bank of British Columbia v. Anglo-American Cedar Products Ltd.* (1984), 57 B.C.L.R. 350 at 353 (S.C.)**

43. Based on the Petitioners' own materials, it is clear that preliminary issues raised in the Summary Trial Application cannot be adjudicated in the absence of evidence – evidence that can only be uncovered and challenged by the 1974 Plan through discovery.

44. The first issue raised in the Petitioners' Notice of Application involves identifying the proper law to apply to the 1974 Plan Claim – either the law of the United States or the law of Canada.

45. When a court is asked to determine if foreign law is applicable, the first step a court must take is to "characterize" the issue before it. The court will do so by reviewing the facts and determining the nature of the legal question those facts raise.

**Janet Walker, *Castel & Walker Canadian Conflict of Laws*, loose-leaf 6 ed (Toronto: LexisNexis, 2005) ch 3 at 3-1 [*Castel & Walker*]**

46. Once the issue is "characterized", the court will apply the appropriate choice of law rule for that category of legal issue.

***Castel & Walker*, ch 3 at 3-1**

47. It is not always clear which choice of law rule applies, and even where it is some rules are quite fact-dependent. It will often not be possible for a judge to fully resolve the issue at an early stage of the proceedings.

***Douez v. Facebook, Inc.*, 2015 BCCA 279 at para. 83, leave to appeal granted 2016 CanLII 12162 (S.C.C.)**

48. The 1974 Plan submits that the Court will be required to undertake a contextual and fact-driven analysis to determine the proper law to apply to the 1974 Plan Claim. In particular, the 1974 Plan submits that relevant to the choice of law analysis is the degree of integration of the Canadian and U.S. arms of the Walter Group.

49. The degree of integration between the various entities in the Walter Group is a matter of dispute between the parties. The 1974 Plan has pleaded a number of facts, including the Unadmitted Facts, in its Amended Notice of Civil Claim respecting the

close relationship between all entities in the Walter Group. Many of the Unadmitted Facts can only be proved out of the mouths and through the documents of the Petitioners.

50. Discovery is also necessary for the Court to address other preliminary issues raised in the Summary Trial Application. For instance, the Petitioners seek an order that ERISA is unenforceable by Canadian courts because it conflicts with Canadian public policies. The Court should not be asked to make a final decision on this claim on the basis of public policy arguments without a solid factual foundation.

51. Further, on the Petitioners' view of the extraterritoriality issue, facts are key (see pages 21 and 22 of the Abrams Report). Mr. Abrams suggests that the Court must determine whether conduct relevant to ERISA's focus occurred inside the United States. Mr. Abrams' report suggests that this is a fact-dependent, conduct-driven analysis that would likely be influenced by the degree of integration between the Petitioners' and the other entities in the Walter Group.

52. It is not clear that the issue of whether conduct relevant to ERISA's focus occurred inside or outside of the United States is before the Court on the Petitioners' Summary Trial Application (as their application frames the second issue it appears directed only to the first part of the Abrams Report). If this issue is before the Court, the best source of evidence to address the matter is solely within the Petitioners' control. If it is not, then it accentuates the problem of litigating in slices discussed below.

53. As of the date of filing this application, the 1974 Plan has not received any document disclosure from the Petitioners, nor has it had the opportunity to examine for discovery Mr. Harvey. Absent discovery and examination for discovery of Mr. Harvey, the Court will be unable to find the facts necessary to adjudicate the preliminary issues raised by the application. Moreover, as the 1974 Plan should have the opportunity to develop its case by discovery of documents and examination for discovery, it would be unjust to decide the issues on the Petitioners' Summary Trial Application at this time.

The Petitioners are seeking to litigate in slices

54. The Petitioners' Summary Trial Application does not seek to resolve the 1974 Plan Claim finally. The application accordingly raises concerns about litigating in slices.

55. The question of suitability arises in every Summary Trial Application. It takes on particular significance when a party seeks a summary trial on only some of the issues in the proceeding.

***The Owners, Strata Plan BCS 1165 v. National Home Warranty Group Inc.,  
2015 BCSC 1122 at para. 17 [National Home Warranty]***



56. Where a summary trial application is brought in respect of only a portion of a case, the following factors are pertinent:

- (a) whether the court can find the facts necessary to decide the issues of fact or law;
- (b) whether it would be unjust to decide the issues by way of summary trial, considering amongst other things:
  - i. the implications of determining only some of the issues in the litigation, which requires consideration of such things as:
    - (1) the potential for duplication or inconsistent findings, which relates to whether the issues are intertwined with issues remaining for trial;
    - (2) the potential for multiple appeals; and
    - (3) the novelty of the issues to be determined;
  - ii. the amount involved;
  - iii. the complexity of the matter;
  - iv. urgency;
  - v. any prejudice likely to arise by reason of delay; and
  - vi. the cost of a conventional trial in relation to the amount involved.

***National Home Warranty at para. 19***

57. A consideration of these factors demonstrates that the preliminary issues raised by the Petitioners are not currently suitable for summary determination.

58. As set out above, the Court is not in a position to find the facts necessary to decide all issues of fact or law arising in the application. In particular, the Court is not in a position to determine the proper law of the 1974 Plan Claim. The Court is also not in a position to address the issue raised in the Abrams' Report regarding whether the relevant "conduct" occurred primarily in the United States (assuming that this issue is before the Court). The Court should not litigate in slices in a factual vacuum.

***Bison Properties Ltd. (Re), 2016 BCSC 507 at para. 60***

59. Many of the other factors listed above are also engaged and support the dismissal of the Petitioners' Summary Trial Application.

60. The amount of the claim – over \$1 billion – is clearly significant. If proven, the 1974 Plan Claim will be the most significant claim in these CCAA proceedings by a large margin, resulting in the 1974 Plan receiving almost all of the funds available for distribution to creditors.

61. This case is complex, highlighted by the voluminous materials filed by the Petitioners in support of their Summary Trial Application. The Petitioners have filed over six volumes of materials, including approximately 300 pages of affidavit evidence (inclusive of exhibits). The Petitioners "evidence" also includes the Petitioners' "Statement of Uncontested Facts", which contains 122 "facts" the Petitioners say are relevant to this application (many of which are disputed). Those facts that are disputed largely relate to the degree of integration amongst the entities in the Walter Group – an enterprise of more than 30 corporate entities with operations in three countries selling to customers world-wide.

62. The summary trial procedure should be confined to cases which are relatively straightforward on their facts, particularly when the application is brought by the defendant. This is not such a case.

***Cannaday v. Sun Peaks Resort Corp.* (1998), 44 B.C.L.R. (3d) 195 at para. 53 (C.A.)**

63. There is also a risk that the findings reached on this summary trial will be irrelevant. The summary trial raises only preliminary issues and cannot result in a finding of liability against the Petitioners. If the 1974 Plan were to succeed on this Summary Trial Application but its claim were later to fail on its facts, the summary trial will have proved to be a waste of the parties' – and the Court's – time.

***Prevost v. Vetter*, 2002 BCCA 202 at para. 25**

64. Of further concern to the efficient resolution of this proceeding is the prospect of an appeal from the Summary Trial Application. Indeed, counsel for the Petitioners submitted at the October Appearance that given the 1974 Plan Claim raises an important issue of law (*i.e.* the applicability of ERISA to the Petitioners) there is a high probability of appeal on either side. As the Summary Trial Application raises only preliminary issues, any result in the Court of Appeal in favour of the 1974 Plan would require further adjudication in this Court. This would unnecessarily prolong the litigation, dramatically increase the costs and thus prejudice all parties in the CCAA proceedings.

***Bacchus Agents (1981) Ltd. v. Phillippe Dandurand Wines Ltd.*, 2002 BCCA 138 at para. 26 [*Bacchus*]; *Coast Foundation Society (1974) v. John Currie Architect Inc.*, 2003 BCSC 1781 at para. 18**

65. Further, as the Court is not being asked to adjudicate the 1974 Plan Claim, the determination of the preliminary issues will of necessity be hypothetical. The Court of Appeal has cautioned that trial judges should not address important issues of law unless the case at hand actually requires them to do so. The Court of Appeal should not be asked to address the important issues of law raised in this case until this Court is asked to address all elements of the 1974 Plan Claim and not just certain preliminary issues.

***Bacchus* at paras. 25 and 29**

66. The Petitioners should be required to demonstrate that the administration of justice, as it affects the parties and the orderly use of court time, will be enhanced by dealing with the issues on a summary trial.

***North Vancouver (District) v. Lunde (1998)*, 162 D.L.R. (4th) 402 at para. 33 (B.C.C.A.)**

67. In the circumstances of this case, the Petitioners' Summary Trial Application will not assist in the efficient resolution of the proceeding and should be dismissed.

**Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #6 of Miriam Dominguez, made 2/Dec/2016.
2. Expert Report of Marc Abrams.
3. Expert Report of Judith F. Mazo.
4. Notice of Application of the Petitioners filed on November 16, 2016.
5. Notice of Application of the 1974 Plan filed on November 24, 2016.
6. Pleadings and other materials filed herein.
7. Such other and additional material as counsel may advise and the Court may admit.

The applicant estimates that the application will take 1 day.

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 of 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).

Date: 02/Dec/2016



*For* \_\_\_\_\_  
Signature of lawyer for filing party

Craig P. Dennis, Q.C.  
Canadian counsel for United Mine Workers  
of America 1974 Pension Plan and Trust

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

—

**APPENDIX**

**THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial

- case plan orders: amend
- case plan orders: other
- experts

## 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"

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<p>Tel: 250-356-8589 Email: <a href="mailto:Aaron.Welch@gov.bc.ca">Aaron.Welch@gov.bc.ca</a> <a href="mailto:AGLSBRevTax@gov.bc.ca">AGLSBRevTax@gov.bc.ca</a></p>	
<p><b>Department of Justice</b> Government of Canada 900 – 840 Howe Street Vancouver, BC V6Z 2S9</p> <p>Neva Beckie Email: <a href="mailto:neva.beckie@justice.gc.ca">neva.beckie@justice.gc.ca</a></p>	<p>Counsel to Her Majesty the Queen in right of Canada</p>
<p><b>PJT Partners LP</b> 280 Park Ave. New York, NY 10017</p> <p>Steve Zelin Email: <a href="mailto:zelin@pitpartners.com">zelin@pitpartners.com</a></p>	<p>Financial Advisor</p>
<p><b>Blue Tree Advisors</b> 32 Shorewood Place Oakville, ON L6K 3Y4</p> <p>William E. Aziz Email: <a href="mailto:baziz@bluetreadvisors.com">baziz@bluetreadvisors.com</a></p>	<p>Chief Restructuring Officer</p>
<p><b>Miller Thomson LLP</b> Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1</p> <p>Jeffrey Carhart Email: <a href="mailto:jcarhart@millerthomson.com">jcarhart@millerthomson.com</a></p>	<p>Counsel to Mitsui Matsushima Co., Ltd.</p>
<p><b>Bull Housser &amp; Tupper LLP</b> 1800 – 510 W. Georgia Street Vancouver, BC V6B 0M3</p> <p>Kieran E. Siddall Email: <a href="mailto:kes@bht.com">kes@bht.com</a></p> <p>Scott M. Boucher Email: <a href="mailto:scb@bht.com">scb@bht.com</a></p>	<p>Counsel to Pine Valley Mining Corporation</p>
<p><b>Miller Thomson LLP</b> Barristers and Solicitors</p>	<p>Counsel to Kevin James</p>

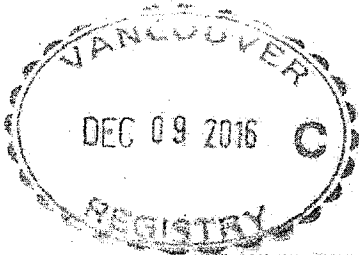
<p>840 Howe Street, Suite 1000 Vancouver, BC V6Z 2M1</p> <p>Heather L. Jones Tel. 604-643-1231 (direct) Tel. 604-687-2242 (main) Email: <a href="mailto:hjones@millერთhompson.com">hjones@millერთhompson.com</a></p>	
<p><b>Caterpillar Financial Services Limited</b> 5575 North Service Road, Suite 600 Burlington, ON L7R 6M1</p> <p>c/o Caterpillar Financial Services Corporation (Global Headquarters) 2120 West End Avenue Nashville, TN 37207</p> <p>Fax: 615-341-8578 Main Phone Line: 1-800-651-0567</p>	
<p><b>Transportation Lease Systems Inc.</b> 205, 10458 Mayfield Road Edmonton AB T5P 4P4</p>	
<p><b>XEROX Canada Ltd.</b> 33 Bloor St. E., 3rd Floor Toronto, ON M4W 3H1</p> <p>Stephanie Grace Email: <a href="mailto:stephanie.grace@xerox.com">stephanie.grace@xerox.com</a></p>	
<p><b>Brandt Tractor Ltd.</b> 9500 190th ST. Surrey B.C. V4N 3S2</p>	
<p><b>Conuma Coal Resources Limited</b> 15 Appledore Lane, P.O. Box 87 Natural Bridge, Virginia 24578</p> <p>Tom Clarke Email: <a href="mailto:tom.clarke@kissito.org">tom.clarke@kissito.org</a></p> <p>Chuck Ebetino Email: <a href="mailto:cebetino@erpfuels.com">cebetino@erpfuels.com</a></p> <p>Jason McCoy Email: <a href="mailto:jmccoy@erpfuels.com">jmccoy@erpfuels.com</a></p>	<p>Purchaser</p>

<p>Bill Hunter Email: <a href="mailto:whunter1@optonline.net">whunter1@optonline.net</a></p> <p>Robert Carswell Email: <a href="mailto:bobcarswellus@outlook.com">bobcarswellus@outlook.com</a> Joe Bean (ERP Internal Counsel) Email: <a href="mailto:jowabean@gmail.com">jowabean@gmail.com</a></p> <p><b>Conuma Coal Resources Limited</b> P.O. Box 305 Madison, WV 25130</p> <p>Ken McCoy Email: <a href="mailto:kmccoy@erpfuels.com">kmccoy@erpfuels.com</a></p>	
<p><b>Dentons Canada LLP</b> 15<sup>th</sup> Floor, Bankers Court 850 – 2<sup>nd</sup> Street SW Calgary, Alberta T2P 0R8</p> <p>David Mann Email: <a href="mailto:david.mann@dentons.com">david.mann@dentons.com</a></p> <p>Leanne Krawchuk Email: <a href="mailto:Leanne.krawchuk@dentons.com">Leanne.krawchuk@dentons.com</a></p>	<p>Counsel for Conuma Coal Resources Limited (Purchaser) and Guarantors</p>
<p><b>Rose LLP</b> Suite 810, 333 – 5<sup>th</sup> Avenue SW Calgary, Alberta T2P 3B6</p> <p>Matthew R. Lindsay, Q.C. Tel.: (403) 776-0525 Email: <a href="mailto:matt.lindsay@RoseLLP.com">matt.lindsay@RoseLLP.com</a></p>	<p>Counsel for Conuma Coal Resources Limited (Purchaser)</p>
<p><b>ERP Compliant Fuels, LLC</b> <b>ERP Compliant Coke, LLC</b> <b>Seneca Coal Resources, LLC</b> <b>Seminole Coal Resources, LLC</b></p> <p>Tom Clarke Email: <a href="mailto:tom.clarke@kissito.org">tom.clarke@kissito.org</a></p>	<p>Gurantors</p>
<p><b>Lamarche &amp; Lang</b> 505 Lambert Street Whitehorse, Yukon Y1A 1Z8</p>	<p>Counsel for Pelly</p>



Murray J. Leitch Email: <a href="mailto:mleitch@lamarchelang.com">mleitch@lamarchelang.com</a>	
<b>Parkland Fuel Corporation</b> #5101, 333 – 96 <sup>th</sup> Avenue NE Calgary, Alberta T3K 0S3  Christy Elliott Email: <a href="mailto:Christy.elliott@parkland.ca">Christy.elliott@parkland.ca</a>	Legal Counsel for Parkland
<b>Canada Anglo American</b>  Federico G. Velásquez Email: <a href="mailto:Federico.velasquez@angloamerican.com">Federico.velasquez@angloamerican.com</a>  Jenny Yang Email: <a href="mailto:jenny.yang@angloamerican.com">jenny.yang@angloamerican.com</a>	
<b>Malaspina Consultants</b>  Marianna Pinter Email: <a href="mailto:Marianna@malaspinaconsultants.com">Marianna@malaspinaconsultants.com</a>	
<b>Boale Wood</b>  John McEown Email: <a href="mailto:jmceown@boalewood.ca">jmceown@boalewood.ca</a>	
<b>Fasken Martineau</b>  John Grieve Email: <a href="mailto:jgrieve@fasken.com">jgrieve@fasken.com</a>	Legal Counsel for Boale Wood
<b>Cavalon Capital Corp.</b> 436 Lands End Rd. North Saanich, BC V8L 5L9 Tel: 778-426-3329 Fax: 778-426-0544  <u>Managing Directors</u>  David Tonken Email: <a href="mailto:tonken@icrossroads.com">tonken@icrossroads.com</a>  Greg Matthews Email : <a href="mailto:gregmatthews@shaw.ca">gregmatthews@shaw.ca</a>	

**TAB 6.3**



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 to the 1974 Plan's Application**

---

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

TO: The Service List

THIS IS A RESPONSE TO: the Notice of Application of United Mine Workers of America 1974 Pension Plan and Trust ("1974 Plan"), Applicant filed December 2, 2016.

**Part 1: ORDERS CONSENTED TO**

1. The following paragraphs in the 1974 Plan's Notice of Application: None.

**Part 2: ORDERS OPPOSED**

2. The following paragraphs in the 1974 Plan's Notice of Application: 1, 2.

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

3. The following paragraphs in the 1974 Plan's Notice of Application: None.

**Part 4: FACTUAL BASIS**

4. The Respondent Steelworkers relies on facts set out in Part 1 of the Respondent Steelworker's Second Amended Notice of Civil Claim filed November 16, 2016.
5. The Respondent Steelworkers also relies on those facts set out in Walter Energy Inc.'s (the "Petitioners") Statement of Uncontested Facts dated November 14, 2016.
6. On November 16, 2016 the Petitioners filed a Notice of Application for summary trial of four preliminary issues (the "Summary Trial Application").
7. The Petitioners set out the following issues in the Summary Trial Application:
  - a. 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.
  - b. 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.

- c. 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.
- d. 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.

8. The Respondent Steelworker's position was set out in its response to the Summary Trial Application, filed November 24, 2016.

9. On November 23, 2016, the 1974 Plan filed a Notice of Application seeking (i) an order striking the expert report of Marc Abrams filed by the Petitioners; and (ii) an order for further discovery from the Petitioners.

10. On December 2, 2016, the Honourable Madam Justice Fitzpatrick dismissed the 1974 Plan's November 23, 2016 application.

**Part 5: LEGAL BASIS**

11. The Respondent Steelworkers support the Petitioner's Summary Trial Application and say that the issues therein are suitable for Summary Trial.

12. The Supreme Court of Canada has recently discussed the importance of resolving matters summarily stated that a "culture shift" is required to allow judges to actively manage the legal process in line with the principle of proportionality

*Hryniak v. Mauldin* 2014 SCC 7, applied in *Morin v. 0865580 B.C. Ltd.*, 2015 BCCA 502 at para. 16

13. Cases should be decided summarily if the court is able to find the facts necessary for that purpose, even though there may be disputed issues of fact and law, provided that the judge does not find it is unjust to do so.

*Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.)

14. The factors considered by B.C. courts to determine whether or not it would be unjust to proceed by summary trial were listed in *Turkson v. TD Direct Investing, a Division of TD Waterhouse Canada Inc.* 2016 BCSC 732, at para. 65:

[...]in considering whether it would be unjust to proceed summarily, the courts have typically considered the complexity of the matter, any urgency and prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings, whether credibility is a critical factor in the determination of the dispute, whether the summary trial may create an unnecessary complexity in the resolution of the dispute, and whether the application would result in litigating in slices.

15. In these circumstances, it would not be unjust to proceed summarily. There is significant urgency to these proceedings; the cost of an expansive conventional trial would be very high; and, the legal issues can be adjudicated on affidavit evidence. Any further delay would also cause considerable hardship to the Respondent Steelworker's members. Many of the Respondent Steelworker's members have not been paid since April 2014 and have waited nearly three years to find out whether their claim for statutory severance and termination pay is paid in full or compromised.

16. As was ordered by the Honourable Madam Justice Fitzpatrick on December 2, 2016, further discovery from the Petitioners is not required for the fair adjudication of the issues set out in the Summary Trial Application. The facts required to determine the preliminary issues raised in the Summary Trial Application are before this Honourable Court.

17. Furthermore, the Petitioners are not seeking to "litigate in slices". Rather, there are preliminary issues of law that should be determined in the interests of judicial economy. If this Honourable Court agrees with the arguments set out above, there will be no further requirement for the 1974 Plan to continue its claim against the Petitioners. The administration of justice, as it affects the parties and the orderly use of court time, will be enhanced by dealing with these issues on a summary trial.

18. If the 1974 Plan's Application is allowed, the Respondent Steelworkers will raise further legal arguments to address those remaining issues raised in the Respondent Steelworkers' Second Amended Response to the Notice of Civil Claim filed in this matter, but not which are not addressed in the scope of the Summary Trial Application.

19. 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 Petitioners' Book of Evidence filed in support of the Summary Trial Application; and

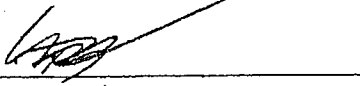
- (iii) Materials produced by the Applicant or other Respondents in support of this Application including expert reports.

The Respondent Steelworkers do not offer a time estimate for this application.

The Respondent Steelworkers have filed in this proceeding a document that contains the application respondent's address for service. The Respondents Steelworkers ADDRESS FOR SERVICE is:

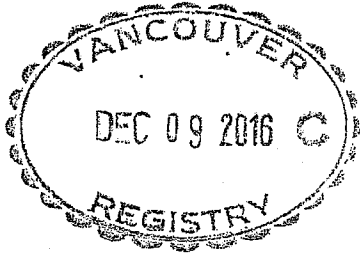
Victory Square Law Office LLP  
Attn: Craig D. Bavis  
710 - 777 Hornby Street  
Vancouver, BC V6Z 1S4  
P: 604-684-8421/F: 604-684-8427  
email: cbavis@vslo.bc.ca

Date: December 9, 2016

  
\_\_\_\_\_  
Craig D. Bavis  
Counsel for the Respondent Steelworkers



**TAB 6.4**



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: Walter Energy Canada Holdings, Inc. and the other Petitioners listed on Schedule "A" (collectively with the partnerships listed on Schedule "A" hereto the "application respondent" or "Walter Canada Group")

THIS IS A RESPONSE TO the notice of application of United Mine Workers of America 1974 Pension Plan and Trust ("1974 Plan") dated December 2, 2016.

#### PART 1 ORDERS CONSENTED TO

The application respondent consents to the granting of none of the orders set out in Part 1 of the notice of application.

#### PART 2 ORDERS OPPOSED

The application respondent opposes the granting of all of the orders set out in Part 1 of the notice of application.

#### PART 3 ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of none of the orders set out in Part 1 of the notice of application.

#### PART 4 FACTUAL BASIS

1. This Application asks this court to dismiss Walter Canada Group's notice of application for a summary hearing (the "Summary Hearing Notice of Application") on the basis that there are contested facts rendering the issues unsuited to summary determination.

2. On October 26, 2016, the parties appeared before this Court pursuant to a direction made on August 16, 2016 to determine the procedural vehicle that would be used to determine the issues raised by the 1974 Plan's claim (the "October Appearance").
3. Pursuant to a consent case plan order entered on November 14, 2016 (the "Case Plan Order"), Walter Canada Group filed its Summary Hearing Notice of Application setting out four preliminary questions, each of which relates to whether or not *Employee Retirement Income Security Act of 1974, as amended*, 29 U.S.C. §§ 1001 *et seq.* ("ERISA") governs the 1974 Plan's claim against the Walter Canada Group.
4. If the Court decides any of the four questions in favour of Walter Canada Group, there is no need for any further exchange of evidence and the material costs associated with doing so can be avoided. If however, the Court decides all four questions set out in the Notice of Application in favour of the 1974 Plan, then it may be necessary to exchange additional evidence to determine the remaining factual disputes.
5. There are sufficient admitted and agreed facts for this Court to decide the four questions in favour of Walter Canada Group.
6. Furthermore, the parties have filed expert reports providing this Court with a sufficient evidentiary foundation to make findings of fact concerning the content of US law, if applicable. Neither expert indicated that further facts are required to complete that exercise.

#### **PART 5 LEGAL BASIS**

1. See the written submissions to be filed by the Walter Canada Group pursuant to the Case Plan Order on January 5, 2017 or, if agreed between counsel, on December 12, 2016.

#### **PART 6 MATERIAL TO BE RELIED ON**

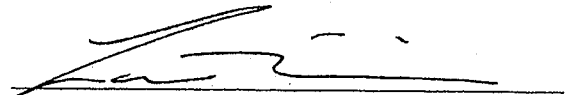
1. All of the materials referenced in the Summary Hearing Application and subsequently filed by Walter Canada Group in respect of the Summary Hearing Application;
2. To the extent specifically identified by Walter Canada Group, the materials filed by 1974 Plan in respect of the Summary Hearing Application;
3. Any cross-examination of the parties' experts conducted during the Summary Hearing Application;
4. The pleadings and other materials filed in the within action; and
5. Such further materials as counsel may advise and the Court may admit.

The application respondent estimates that the application will take a half day and will be addressed in argument during the Summary Hearing scheduled for the week of January 9, 2017.

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

December 9, 2016

Dated



Signature of lawyer for application respondent

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

and

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

## 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

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

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APPLICATION RESPONSE

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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

**TAB 6.5**

This is the 2<sup>nd</sup> Affidavit of Susan Danielisz in this case and was made on December 8, 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"

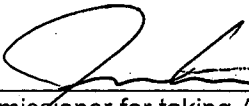
PETITIONERS


**AFFIDAVIT**

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 the Petitioners' Notice to Admit dated November 14, 2016 (including all documents contained in the Walter Canada Group's Book of Evidence), which was served upon counsel for The United Mine Workers of America 1974 Pension Plan and Trust, Dentons Canada LLP, on November 14, 2016.
3. Attached hereto and marked as **Exhibit "B"** to this my Affidavit is a true copy of the Response to the Petitioners' Notice to Admit of the United Mine Workers of America 1974 Pension Plan dated November 27, 2016.

SWORN BEFORE ME at Vancouver, British Columbia, on this 8<sup>th</sup> day of December, 2016.

  
A Commissioner for taking Affidavits of  
British Columbia.  
**JAMES ENNS**  
*Barister and Solicitor*  
**DLA Piper (Canada) LLP**  
666 Burrard Street, Suite 2800  
Vancouver, BC V6C 2Z7  
604.687.9444

  
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 #2 of  
Susan Danielisz, sworn before me at Vancouver,  
British Columbia, on December 8, 2016.



---

A Commissioner for taking Affidavits  
for British Columbia

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:

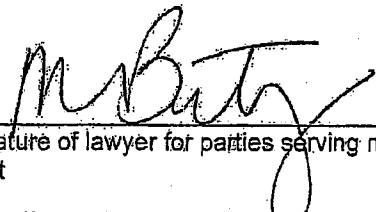
NOTICE TO ADMIT

TO: The United Mine Workers of America 1974 Pension Plan and Trust  
(the "1974 Plan")

TAKE NOTICE that 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") requests the 1974 Plan to admit, for the purpose of this proceeding only, the facts set out below and the authenticity of the documents referred to below, copies of which are attached.

AND TAKE NOTICE that, unless the court otherwise orders, if the party to whom this notice is directed does not serve a written statement, as provided in Rule 7-7 (2) of the Supreme Court Civil Rules, within 14 days after service of a copy of this notice on him or her, then the truth of the facts and the authenticity of the documents will be deemed to be admitted.

November 14, 2016  
Dated \_\_\_\_\_

  
\_\_\_\_\_  
Signature of lawyer for parties serving notice to admit

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")

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

and

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

The facts, the admission of which is requested, are:

1. All facts set out in the Walter Canada Group's Statement of Uncontested Facts (contained in the Walter Canada Group's Book of Evidence) not previously admitted by the 1974 Plan.
2. The Walter Canada Group's mines and other assets were governed by the environmental laws in force in British Columbia and the federal laws of Canada applicable therein.
3. The Walter Canada Group's mines and other assets were not governed by state or federal environmental legislation in force in the United States of America.
4. The Walter Canada Group's mines and other assets were governed by the mining laws in force in British Columbia and the federal laws of Canada applicable therein.
5. The Walter Canada Group's mines and other assets were not governed by state or federal mining legislation in force in the United States of America.
6. The corporations and partnerships comprising the Walter Canada Group paid income taxes pursuant to the Canadian *Income Tax Act* and certain provincial income tax statutes.
7. The corporations and partnerships comprising the Walter Canada Group did not pay income taxes pursuant to any income tax legislation in force in the United States of America.
8. The Walter Canada Group's relationships with its unionized employees were governed by the labour laws in British Columbia and the federal laws of Canada applicable therein.
9. The Walter Canada Group's relationships with its unionized employees were not governed by state or federal mining legislation in force in the United States of America.
10. The Walter Canada Group's relationships with its non-unionized employees were governed by the employment laws in British Columbia and the federal laws of Canada applicable therein.
11. The Walter Canada Group's relationships with its non-unionized employees were not governed by state or federal mining legislation in force in the United States of America.
12. The exposure of directors and officers of the Walter Canada Group entities to obligations in respect of Walter Canada Group unpaid wages, unremitted source deductions, unpaid accrued vacation pay and certain taxes arose pursuant to laws in force in British Columbia and the federal laws of Canada applicable therein.

The documents, the authenticity of which admission is requested, are:

1. All documents included in the Walter Canada Group's Book of Evidence, other than the Walter Canada Group's Statement of Uncontested Facts.

**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

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

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NOTICE TO ADMIT

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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

MUB/sd

This is Exhibit "B" referred to in Affidavit #2 of  
**Susan Danielisz**, sworn before me at Vancouver,  
British Columbia, on December 8, 2016.



A Commissioner for taking Affidavits  
for British Columbia

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*,  
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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

**RESPONSE TO NOTICE TO ADMIT**

This is the response of the United Mine Workers of America 1974 Pension Plan and Trust (the "1974 Plan") to the Notice to Admit of Walter Energy Canada Holdings, Inc. and the other Petitioners listed on Schedule "A", delivered on November 14, 2016. All references herein to paragraph numbers are to paragraphs in the Notice to Admit.

The 1974 Plan responds as follows with respect to the requested admissions of fact:

1. The admissions requested in paragraph 1 are denied. The 1974 Plan has not had discovery and is accordingly not in a position to admit all facts set out in the Walter Canada Group's Statement of Uncontested Facts. Further, the 1974 Plan and the Petitioners intend to file an Agreed Statement of Facts for the purpose of the hearing of the Petitioners' Notice of Application for summary trial filed November 16, 2016 currently scheduled for January 9, 2016 (the "Summary Trial"). Any admissions that the 1974 Plan is prepared to make for the Summary Trial will be included in the Agreed Statement of Facts.
2. The admissions requested in paragraphs 2, 3, 4 and 5 are denied. The 1974 Plan admits that the Brule, Willow Creek and Wolverine mines are located in British Columbia. However, the specific admissions sought are matters of mixed fact and law.




3. The admissions requested in paragraphs 6 and 7 are denied. The 1974 Plan admits that each of the Petitioners is a company incorporated or a partnership organized under the laws of British Columbia. However, the specific admissions sought are matters of mixed fact and law.
4. The admissions requested in paragraphs 8, 9, 10 and 11 are denied. The 1974 Plan admits that the Petitioners employed employees to do work in British Columbia. However, the specific admissions sought are matters of mixed fact and law.
5. The admissions requested in paragraph 12 are denied. The specific admissions sought are matters of mixed fact and law.

The 1974 Plan responds as follows with respect to the documents the authenticity of which admission is requested:

1. The admissions requested in paragraph 1 are denied. The 1974 Plan has not had discovery and is accordingly in no position to admit the authenticity of all documents in the Walter Canada Group's Book of Evidence. It is expected that the admissibility of documents for the purpose of the Summary Trial will be addressed in the Agreed Statement of Facts.

Date: November 27, 2016

  
\_\_\_\_\_  
for Signature of Craig P. Dennis, Q.C.  
Lawyer for United Mine Workers of  
America 1974 Pension Plan  
and Trust

**SCHEDULE "A"****Petitioners**

1. Walter Canadian Coal ULC
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3. Brule Coal ULC
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