

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

WALTER CANADA GROUP'S BOOK OF EVIDENCE
(Volume 1)

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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).¹ 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.²

¹ 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.

² In particular, in its January 4, 2016, Application Response, the 1974 Plan listed as “Materials to be Relied On” the 1st 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 1st 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).³ 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.

³ 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 (*1st 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; 1st 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 (*1st 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 (*1st 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 (*1st 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 (*1st 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 (*1st 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 (*1st 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 (*1st 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 (*1st 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 (*1st 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; 1st 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 (*1st 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 (*1st 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 (*1st 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 (*1st 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") (*1st 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 (*1st 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 (*1st 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 (*1st 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 (*1st 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 (*1st 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 (*1st 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; 1st 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 (*1st 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) (*1st 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* (1st *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* (1st *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 1st 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 (*1st 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 (*1st 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 (*1st 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* (*1st 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 (*1st 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 (*1st 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 (*1st 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 (*1st 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 (*1st 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” (*1st 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.” (*1st 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 (*1st 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 (*1st 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 (*1st 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” (*1st 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 (*1st Affidavit of Miriam Dominguez, Exhibit A*).

100. CR: The 1974 Plan filed a proof of claim against Walter Energy (*1st Affidavit of Miriam Dominguez, Exhibit B*) and all other US Debtors (*2nd 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 (*1st 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; 1st 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”) (*2nd 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” (*2nd 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 (*2nd 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” (*2nd 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” (*2nd 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 (*2nd 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” (*2nd 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”) (*2nd 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” (2nd 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 (2nd Affidavit of Miriam Dominguez, Exhibit D, p. 64, para. 10; 2nd 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; 1st 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; 1st 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; 1st 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; 1st 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; 1st 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 (*1st 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

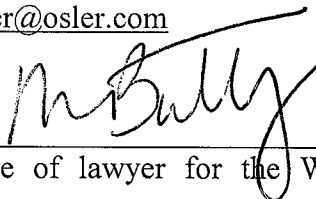
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Date: November 14, 2016



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: 20th 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, 2016⁵, 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.

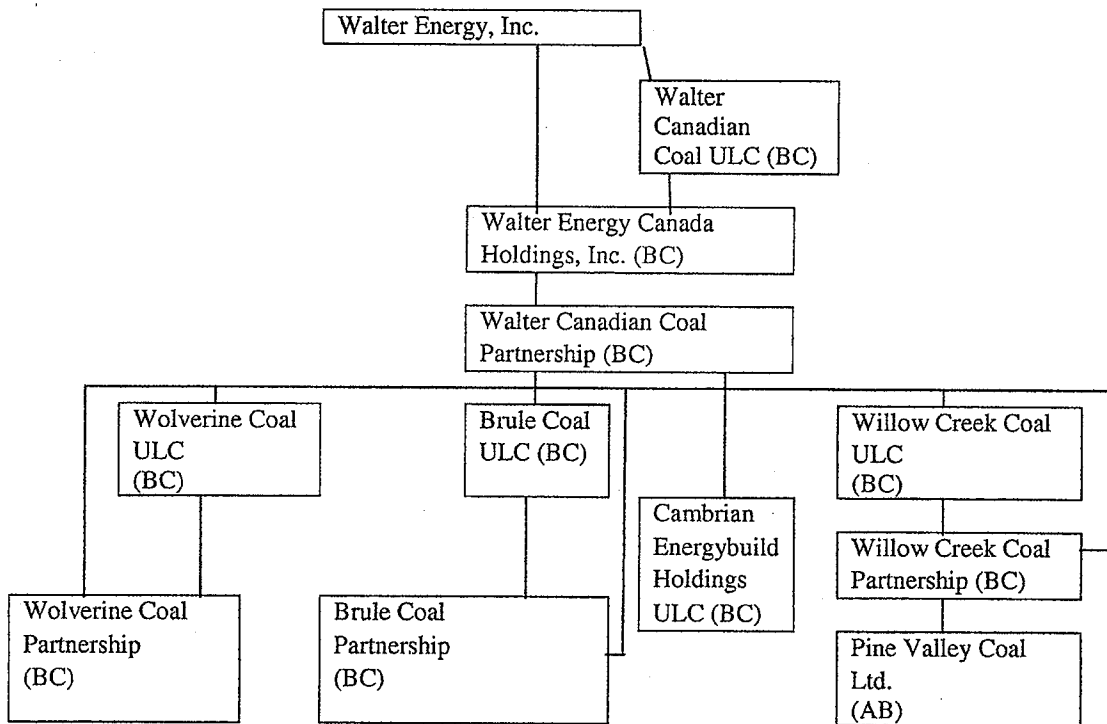
Walter Resources' Participation in the 1974 Plan

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
20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8
Attention: John Sandrelli, Craig Dennis &
Tevia Jeffries

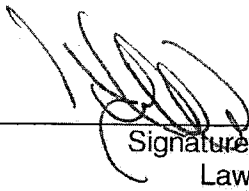
Fax number address for service (if any): 604-683-5214

E-mail address for service (if any): john.sandrelli@dentons.com
craig.dennis@dentons.com
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.

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.

Tusacaloosa 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 ~~73-73~~, 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 ~~68-68~~, 70, 74 to 78, 80 to 85, 96, 97, and ~~70~~99(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 an 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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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

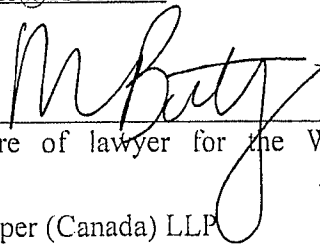
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Date: September 23, 2016



Signature of lawyer for the Walter Canada
Group

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

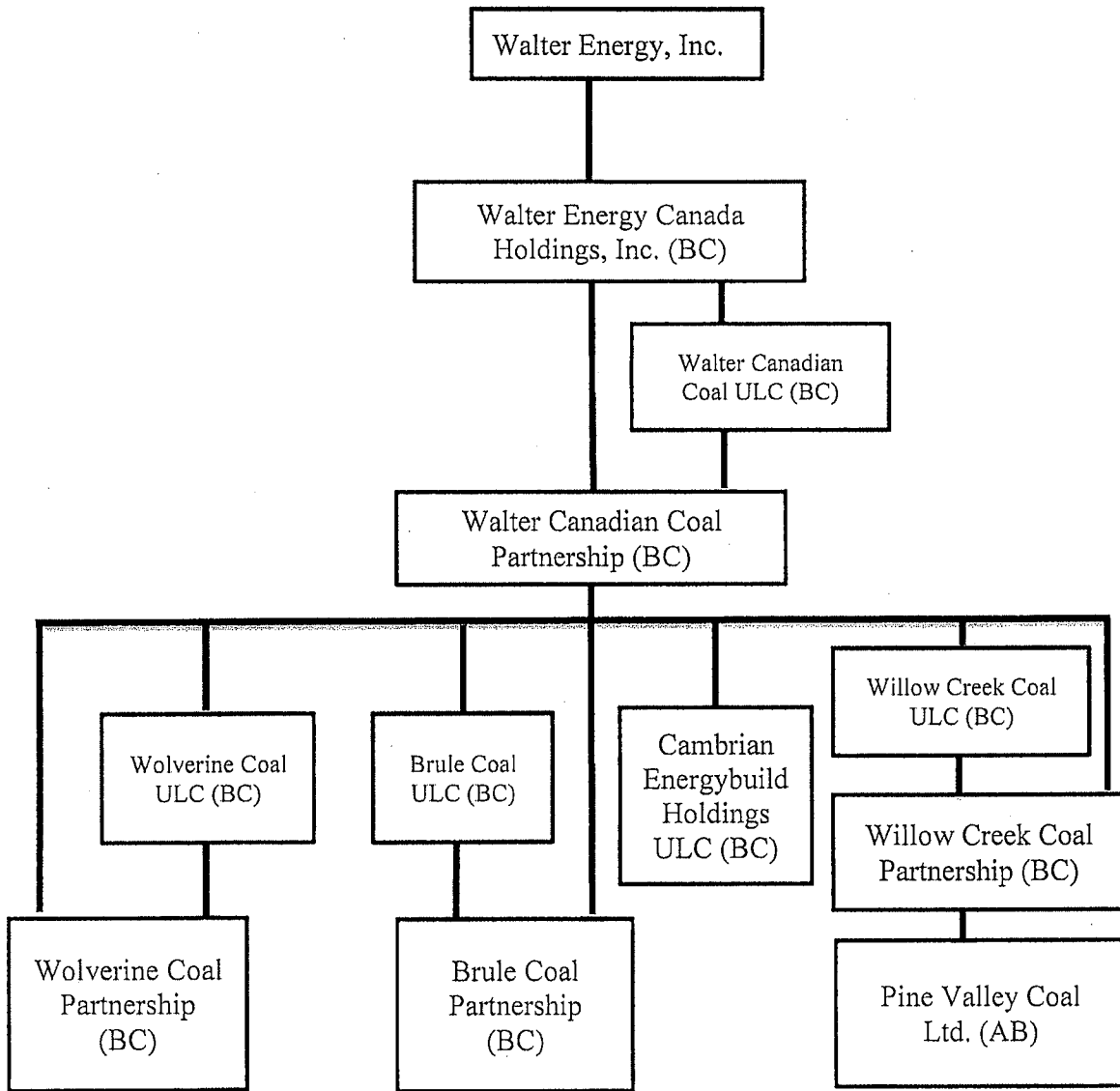
and

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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 - (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 :

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Fax. 604.684.8427
email: cbavis@vslo.ca

Date: Revised November 10, 2016

Craig D. Bavis
Counsel for the Respondent Union

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 - (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,
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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

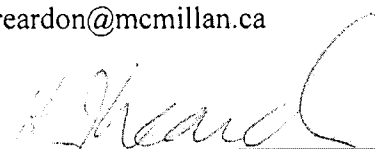
Fax number address for service (if any):

(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.

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

RESPONSE TO CIVIL CLAIM

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

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PETITIONERS

REPLY

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

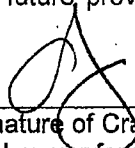
In reply to: The Response to Civil Claim of the Civil Claim of the United Steelworkers, Local 1-424 (the "**Respondent Steelworkers**")

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

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