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

PETITIONERS

APPLICATION RESPONSE

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

THIS IS A RESPONSE TO the Notice of Application of the Petitioners dated the 30th day of December, 2015.

1. ORDERS CONSENTED TO

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

2. ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in paragraphs 1(b), 1(c), 1(d), 1(f), and 1(g) of the Notice of Application.

3. ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of the orders set out in paragraphs 1(a) and 1(h) of the Notice of Application. In regard to paragraph 1(e), the concept of a SISP is not opposed but the details of the SISP attached to the Notice of Application are still being reviewed.

4. FACTUAL BASIS

1. The 1974 Plan relies on the factual background of these proceedings set forth in the Petitioners' Notice of Application filed December 30, 2015 (the "**Notice of Application**"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Notice of Application.

1974 Pension Plan

2. The claims against the Walter Canada Group of the 1974 Plan arise under (a) the United Mine Workers of America 1974 Pension Plan, effective December 6, 1974 (the "**1974 Plan Document**"), (b) certain collective bargaining agreements between the United Mine Workers of America and certain American affiliates of the Walter Canada Group (the "**CBAs**"), and (c) the *Employee Retirement Income Security Act of 1974*, 29 USC §§101 *et seq*., as amended ("**ERISA**").

3. Proofs of claim filed by the 1974 Plan (the "**Proofs of Claim**") in the proceedings of the Walter Canada Group's American affiliates ("**Walter Energy US**") under Chapter 11 of the United States Bankruptcy Code (the "**US Bankruptcy Code**") are attached to the First Affidavit of Miriam Domínguez, sworn January 4, 2016 (the "**Domínguez Affidavit**"), and set out more fully the basis of the 1974 Plan's claim.

4. In summary, certain of the Walter Energy US entities are participating employers in the 1974 Plan. Under section 4001(b)(1) of ERISA, these entities and *all* trades or businesses under common control with them constitute a single employer participating in the 1974 Plan.

5. Pursuant to ERISA, if Walter Energy US rejects the CBAs, it is deemed to have withdrawn from the 1974 Plan, and it and all its affiliates under common control become jointly and severally liable for any "withdrawal liability" owed to the 1974 Plan by any employer within its controlled group.

6. Withdrawal from the 1974 Plan is also deemed to occur in a liquidation of the participating employers' assets.

7. Withdrawal liability is imposed by ERISA and is based on the portion of the 1974 Plan's unfunded vested benefits attributable to the employer.

8. At the time of filing the Proofs of Claim, the unfunded vested benefits attributable to the Walter Energy group, for which the Walter Canada Group is jointly and severally liable, was $904,367,132, as set forth in the Proofs of Claim. This amount has increased over the course of the Chapter 11 proceedings and is now significantly higher.

9. Walter Energy US recently obtained a judgment from the United States Bankruptcy Court for the Northern District of Alabama (the "**US Bankruptcy Court**") authorizing Walter Energy US, pursuant to sections 1113 and 1114 of the US Bankruptcy Code, to reject the CBAs and adjudging and decreeing the CBAs rejected (the "**1113/1114 Order**"). The 1113/1114 Order is attached to the Domínguez Affidavit.

10. An auction for the assets of Walter Energy US is scheduled in Alabama for January 5, 2016, and a sale hearing before the US Bankruptcy Court is scheduled for January 6, 2016. 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 all its affiliates, including the Walter Canada Group, will be liable for withdrawal liability.

11. As a result of the 1113/1114 Order, it is arguable that the 1974 Plan's claim against the Walter Canada Group is no longer contingent, the CBAs have been rejected, and the Walter Canada Group is jointly and severally liable for the withdrawal liability. 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 authorized 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. Consequently, if the 1974 Plan's claim is contingent as at the date hereof, it will not remain contingent for long.

Engagement of Professionals

12. In what is essentially a liquidating CCAA, in addition to the statutorily required Monitor, the Petitioners are seeking to retain the Financial Advisor and the CRO, both of whom are to benefit from significant success fees on a super-priority basis.

13. The Petitioners also seek to retain a key employee at a higher salary than prior to the commencement of the CCAA proceedings, subject to a KERP that is, according to the First Report of the Monitor filed December 31, 2015 (the "**Report**"), on the high end of the range of retention bonuses payable pursuant to KERPs approved in other recent CCAA proceedings. No details of the quantum of the KERP have been provided to stakeholders.

14. Neither the Second Affidavit of William G. Harvey, sworn December 31, 2015 nor the Report provide sufficient information (a) to justify the retention of this number of professionals to supervise a sale of assets of the Petitioners, (b) to justify the significant "success fees" to be paid both to the Financial Advisor and the CRO, (c) to explain how the retention of these professionals will not be duplicative, or (d) to provide a basis for stakeholders to assess the impact of the KERP and KERP Charge on their interests.

Intercompany Charge

15. According to the information set forth in the First Affidavit of William G. Harvey, sworn December 4, 2015, the Brule Coal Partnership is a guarantor and obligor under the 2011 Credit Agreement.

16. As a result, subject to any defects in Morgan Stanley's security, the Brule Coal Partnership is already obligated, on a secured basis, to Morgan Stanley in respect of amounts advanced under the Canadian Revolver, including the letters of credit.

17. In addition, the language of the draft form of order with respect to the Intercompany Charge is much broader than merely securing amounts advanced in respect of the letters of credit, but provides all entities in the Walter Canada Group with a priority secured position in respect of all amounts advanced by such entity on behalf of another with no information on or justification for such amounts.

18. The evidentiary record for this application does not provide information regarding the impact of the Intercompany Charge on the Walter Canada Group stakeholders. The Report states that the Intercompany Charge is being sought to protect the interests of the creditors of the Brule Coal Partnership, but does not provide any additional explanation or detail.

SISP

19. With respect to the SISP, while the 1974 Plan does not oppose a sales and investor solicitation process generally, it reserves any rights to object to or otherwise comment upon any proposed sale or investment.

5. LEGAL BASIS

1. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended, in particular section 11.

2. Pursuant to section 11 of the CCAA, this Court may "make any order that it considers appropriate in the circumstances."

3. The applicants bear the burden of showing that the relief sought is appropriate in the circumstances.

4. Here, the Petitioners have not satisfied their burden.

5. The evidentiary record does not justify the retention of the Financial Advisor *and* the CRO, when combined with the role of the Monitor and the key employee to be retained subject to the KERP.

6. Rather, such retention is potentially duplicative, unwarranted and uneconomic.

7. Moreover, the Petitioners have provided no justification for the duplication of success fees for both the Financial Advisor and the CRO.

8. The Petitioners have provided no information to the 1974 Plan with respect to the KERP, even on a confidential basis. As such, there is no ability for the 1974 Plan to assess whether the KERP, when taken in combination with the retention of the Financial Advisor, the CRO and the Monitor, is appropriate, or is also duplicative, unwarranted and uneconomic.

9. Finally, very limited information has been provided on the impact of the proposed Intercompany Charge on the creditors of the Walter Canada Group, and no justification has been provided regarding why it is appropriate in the circumstances to provide the Brule Coal Partnership with priority secured status given that it appears to be already obligated in respect of amounts to be advanced.

10. Given the above, the 1974 Plan submits that the Petitioners have failed to show that:

    (a) the retentions of the Financial Advisor and CRO are justified in the circumstances on the terms set forth in their respective engagement letters; and

    (b) the Intercompany Charge is justified in the circumstances.

11. Further, while the 1974 Plan understands the Petitioners' justification for a plan to retain the key employee, the 1974 Plan has no basis to assess the reasonableness of the terms of the KERP being sought. The 1974 Plan submits that the Court, which is in possession of information regarding the terms of the KERP filed under seal, should assess the reasonableness of the KERP in the context of the other relief being sought, in particular with respect to the Financial Advisor and the CRO.

12. Consequently, the 1974 Plan submits that such relief should either be denied or adjourned pending further information to be supplied by the Petitioners.

6. MATERIAL TO BE RELIED ON

1. Affidavit #1 of William G. Harvey, sworn December 4, 2015;

2. Initial Order made December 7, 2015;

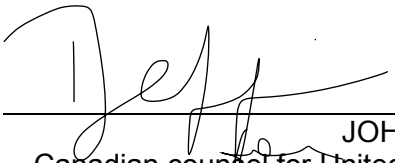
3. Affidavit #2 of William G. Harvey, sworn December 31, 2015;

4. First Report of the Monitor, dated December 31, 2015;

5. Affidavit #1 of Miriam Domínguez, made 04/January/2016.

The application respondent estimates that the application will take ½ day.

Date: 04/January/2016



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SCHEDULE "A"

Petitioners

1. Walter Energy Canada Holdings, Inc.
2. Walter Canadian Coal ULC
3. Brule Coal ULC
4. Willow Creek Coal ULC
5. Wolverine Coal ULC
6. Cambrian Energybuild Holdings ULC
7. Pine Valley Coal Ltd.
8. 0541237 B.C. Ltd.

Partnerships

9. Walter Canadian Coal Partnership
10. Brule Coal Partnership
11. Willow Creek Coal Partnership
12. Wolverine Coal Partnership