



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 22nd day
of March, 2016.

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 paragraph 4 of
Schedule "C" 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 - 3 and 5 - 8 of Schedule "C" of the Notice of Application.

4. FACTUAL BASIS

1. The 1974 Plan relies on the factual background of these proceedings set forth in the Petitioners' Notice of Application filed March 22, 2016 (the "**Notice of Application**").
2. The 1974 Plan further relies on the factual background of these proceedings set forth in the 1974 Plan's Application Response filed January 4, 2016 (the "**Application Response**"), which sets out the basis for the joint and several liability of each of the Petitioners, pursuant to the United Mine Workers of America 1974 Pension Plan, effective December 6, 1974 (the "**1974 Plan Document**"), the 1974 Plan's collectively bargained arrangements with the United Mine Workers of America (the "**UMWA**"), and the *Employee Retirement Income Security Act of 1974*, 29 USC §§101 *et seq.*, as amended ("**ERISA**"), as part of the same "control group" of Jim Walter Resources, Inc. ("**JWR**"), for "withdrawal liability" representing JWR's proportionate share of the 1974 Pension Plan's unfunded vested benefits.
3. As set forth in the Application Response and attached to the First Affidavit of Miriam Dominguez, sworn January 4, 2016 (the "**First Dominguez Affidavit**"), on or about October 12, 2015, the 1974 Plan filed a proof of claim an amount no less than \$904,367,132 against each U.S. debtor. The 1974 Plan asserted a slightly higher claim against JWR, which also reflected a small delinquency.
4. On December 28, 2015, Walter Energy US 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 First Dominguez Affidavit. A slight amendment thereto is attached to the Second Dominguez Affidavit.
5. The 1974 Plan, the United Mine Workers of America Combined Benefit Fund, the United Mine Workers of America 1992 Benefit Plan, and the UMWA appealed the 1113/1114 Order.

6. In February 2016, the UMWA, the US debtors and Coal Acquisition, LLC ("**CA**"), the purchaser of the U.S. debtors' core mining assets, subsequently reached an agreement (including a new collective bargaining agreement between the UMWA and CA).
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.
8. Because JWR does not have an obligation to contribute to the 1974 Plan, pursuant to section 4203 of ERISA, JWR has incurred a complete withdrawal from the 1974 Plan, and the withdrawal liability claims of the 1974 Plan in respect of all the entities in JWR's control group, including the Petitioners, have become fixed, non-contingent liabilities. In addition, upon the closing of the sale to CA, JWR will have permanently ceased all covered operations, which is an additional basis for a complete withdrawal under section 4203 of ERISA.
9. On December 22, 2015, the US Bankruptcy Court entered an order approving a global settlement (the "**Global Settlement**") among the US debtors, the Official Committee of Unsecured Creditors (the "**Committee**") and CA. Pursuant to the Global Settlement, among other things, Warrior Met Coal, LLC (formerly known as CA) will issue one percent (1%) of its equity (the "**Equity**") (subject to dilution) to a newly formed trust (the "**Equity Trust**"), which will hold the Equity and other assets of the Equity Trust for the benefit of unsecured creditors of the US debtors, including the 1974 Plan. Certain unsecured creditors will also have the opportunity to participate in exit financing of CA.
10. The Global Settlement does not release claims of unsecured creditors against the US debtors or their affiliates.
11. The Equity Trust will be formed and funded at the closing of the sale of the US debtors' core assets to Warrior Met Coal, which is expected to occur on March 31, 2016. The Equity Trust, in turn, will hold the Equity and other Equity Trust assets for the benefit of certain creditors holding general unsecured claims, including the 1974 Plan.
12. On Friday, March 18, 2016, the Debtors and the Official Committee of Unsecured Creditors filed a joint motion (the "**Joint Motion**") for an order authorizing procedures to implement the global settlement in the US bankruptcy cases.

13. Pursuant to the Joint Motion, the US debtors and the Committee sought authority to estimate the total outstanding unsecured creditor claims pool at \$81.6 billion, and, because the estimated distributed value per dollar of claim is expected to be minimal in light of the limited recovery available to general unsecured creditors under the Global Settlement, to limit distributions from the Equity Trust to claims of \$2 million or higher,
14. For purposes of allocating the Equity, the Joint Motion contemplates counting the claim of the 1974 Plan against each of the 23 US debtors, in an amount equal to the approximately \$904 million asserted in each of the 1974 Plan's proofs of claim, for a total of approximately \$20.8 billion.
15. By Order dated March 24, 2016, the US Bankruptcy Court approved the Joint Motion.

Intercompany Charge

16. The Petitioners seek to expand the Intercompany Charge to provide 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 limited information on and no justification for such amounts.
17. As was the case with the Petitioners' Notice of Application filed December 31, 2015, returnable January 5, 2016, the evidentiary record for this application does not provide any information regarding the impact of the amendment to the Intercompany Charge on the Walter Canada Group stakeholders. There is merely a statement in the Second Report of the Monitor that the Intercompany Charge is being sought to protect the interests of the creditors of the Walter Canada entities.
18. The record contains no explanation why these intercompany advances should be entitled to greater priority than the typical situation where such amounts would be unsecured intercompany advances.
19. Further, the order sought contains no provision or restriction requiring the Monitor to report on the quantum and reasonableness of advances made and secured by the charge.

5. LEGAL BASIS

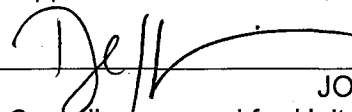
1. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended, in particular section 11.
2. Pursuant to section 11 of the CCAA, this Court may "make any order that it considers appropriate in the circumstances."
3. The applicants bear the burden of showing that the relief sought is appropriate in the circumstances.
4. Here, the Petitioners have not satisfied their burden.
5. As with the Petitioners' last application, 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 these advances with priority secured status given that typically such advances would be unsecured.
6. Given the above, the 1974 Plan submits that the Petitioners have failed to show that the amendment to the Intercompany Charge is justified in the circumstances.
7. Consequently, the 1974 Plan submits that such relief should be denied.

6. MATERIAL TO BE RELIED ON

1. First Report of the Monitor, dated December 31, 2015;
2. Affidavit #1 of Miriam Domínguez, sworn January 4, 2016;
3. Affidavit #1 of William Aziz, sworn March 22, 2016;
4. Second Report of the Monitor, dated March 24, 2016; and
5. Affidavit #2 of Miriam Domínguez, sworn March 29, 2016.

The application respondent estimates that the application will take 90 minutes.

Date: 29/March/2016


JOHN SANDRELLI
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of America 1974 Pension Plan and Trust

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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