



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, 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  
(APPLICANTS)

AND

THE UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING,  
ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS  
INTERNATIONAL UNION (UNITED STEELWORKERS), LOCAL 1-424

APPLICATION RESPONDENT

**APPLICATION RESPONSE**

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

TO: The Service List

THIS IS A RESPONSE TO: the Notice of Application of Walter Energy Holdings Inc et al,  
Applicants (Petitioners), filed December 31, 2015.

**Part 1: ORDERS CONSENTED TO**

The following paragraphs in the Applicants' Notice of Application Schedule A Draft Order: none

**Part 2: ORDERS OPPOSED**

The following paragraphs in the Applicants' Notice of Application Schedule A Draft Order: 3

The Application Respondent does not oppose extension of the Stay if it does not apply to the following actions:

1. The hearing of the Petition for Judicial Review in the matter of *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 1-424 v. Wolverine Coal Partnership -and- BC Labour Relations Board*, BC Supreme Court File No. S-151240, Vancouver Registry (the "Northern Allowance JR").
2. The hearing of the Petition for Judicial Review in the matter of *Wolverine Coal Partnership v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-424 -and- BC Labour Relations Board*, BC Supreme Court File No. S-159678, Vancouver Registry (the "Adjustment Plan JR").
3. An application to the B.C. Labour Relations Board to quantify damages if necessary in the matter of *Wolverine Coal Partnership v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-424*, BC Labour Relations Board Files No. 68683 and 67987 (the "Adjustment Plan Remedy").

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

The following paragraphs in the Applicants' Notice of Application Schedule A Draft Order: 1, 2, 4-30.

**Part 4: FACTUAL BASIS**

1. The Application Respondent, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ,(the "Steelworkers") is the certified bargaining agent for production employees at the Wolervine Mine near Tumbler Ridge BC, operated by Walter Energy Inc and Wolverine Coal Ltd as Wolverine Coal Partnership ("Wolverine").

2. By Order of this Court on December 7, 2015, all proceedings between Wolverine and the Steelworkers were stayed, including the Northern Allowance JR, the Adjustment Plan JR, and the Adjustment Plan Remedy.

Adjustment Plan Complaint

3. On April 15, 2014, Wolverine indefinitely laid off the majority of the bargaining unit without any advance to notice or discussion with the Union and with no recall date.

4. All employees remain on layoff as of today with recall rights that will expire in April 2016.

5. The Steelworkers filed a complaint with the BC Labour Relations Board (the “Board”) because Wolverine failed to meet with the Union and develop an adjustment plan as required by s. 54 of the *Labour Relations Code*.

6. Wolverine took the position that s. 54 did not apply to an indefinite layoff.

7. The Board found that Wolverine was in breach of the *Code* on June 9, 2015 in BCLRB No. B106/2015 as follows:

For all of the reasons set out, I find the Employer violated its duty under Section 54(1) of the Code to give notice to, and consult with, the Union when it idled the Mine and implemented the Indefinite Layoff.

I hereby order the Employer and the Union to meet forthwith and consult with respect to any issues relating to the Indefinite Layoff.

The Employer agrees that damages in lieu of notice are the appropriate remedy in the face of a violation of the duty to give 60 days' notice under Section 54(1) of the Code. Accordingly, I order damages equivalent to 60 days' pay for each of the affected employees, subject to mitigation: *Pacific Pool* at para. 61.

BCLRB No. B106/2015, para 147-149

8. Wolverine sought reconsideration of BCLRB No. B106/2015, which was dismissed on September 23, 2015 in BCLRB No. B185/2015.

9. On November 20, 2015, Wolverine filed a petition, the Adjustment Plan JR, but the Steelworkers have not filed a response due to the stay in this matter.

10. Wolverine seeks to overturn the above noted Board decisions and the Steelworkers oppose the petition. The Board is also a respondent but has not yet filed a response.

11. This matter has not been set for hearing, but the Steelworkers agree with the position of Wolverine that one day will be required.

Adjustment Plan Remedy

12. The Board remains seized of the calculations of damages payable to employees as a remedy to BCLRB No. B106/2015 if the parties are unable to reach agreement.

13. The Board summarized the parties' calculations on remedy:

After having made adjustments to its initial estimate based on information provided by the Employer in its response, the Union set out a revised estimate of the total of the Damages Remedy at approximately \$1.96 million, subject to a possible gross-up for premiums and other benefits.

In the Kingwell Declaration, the Employer initially estimated the total amount owing under the Original Damages Remedy to be in the range of \$4 million. In response to the Union's Relief Request, the Employer estimates the total damages owing to be \$771,378.70.

The Employer's estimate excludes affected employees falling into three categories. First, those employees who were inactive during the notice period, such as those on short or long-term disability, workers' compensation benefits, maternity leave or sick leave. Second, those who worked for the Employer during the mitigation period. Third, those who refused recall or were otherwise unavailable to work during the mitigation period.

From the list of affected employees remaining, the Employer's estimate is based on the total wages owing minus the amount of actual mitigation income identified by the Union and minus \$1.3 million being the total amount of damages owing for the 112 employees who have not yet responded to the Union's request for mitigation information. The Union disputes a number of the Employer's exclusions from the employee list as well as certain of its operating assumptions.

BCLRB No. B106/2015, para 11 to 14

14. The Board ordered Wolverine to pay to the Steelworkers \$771,378.70 in trust, pending final disposition of the matter and remained seized with respect to remedy.

15. Wolverine and the Steelworkers have discussed calculations and there are outstanding issues as to how mitigation impacts remedy of individual workers and what benefits and premiums are included in the Board's order of "60 days pay".

16. The parties may need to remit matters to the Board for clarification and determination of these issues.

17. Many employees of Wolverine have left Tumbler Ridge to seek employment elsewhere on a permanent or temporary basis.

#### Northern Allowance

18. Following the layoff, the Steelworkers filed a grievance over the payment of a \$500 per month Northern Allowance under the Collective Agreement.

19. The Steelworkers argued that the Northern Allowance was payable to employees while on lay off. Wolverine argued that the Northern Allowance was payable to employees while actively at work.

20. The grievance was referred to arbitration and an arbitrator dismissed the grievance.

21. The Steelworkers sought review of the arbitration award with the Board, which dismissed the review. The Steelworkers sought reconsideration which was also dismissed

22. The Steelworkers have sought to review Board decisions in the Northern Allowance JR.

23. The parties have agreed that the Northern Allowance JR will take one day to hear, but the matter has not been settled, despite several attempts to set the matter down, due to the scheduling practices of the Vancouver Supreme Court registry.

24. Until the Northern Allowance JR is determined, the liability of Wolverine to employees remains uncertain.

25. If the mine does not reopen prior to the expiration of recall rights and employees are entitled to the Northern Allowance for the full 24 months of layoff, the value of the claim is approximately \$3,500,000 based on an estimate of 300 employees receiving \$500 per month.

## Part 5: LEGAL BASIS

1. The Court has discretion under the *Companies Creditors Arrangement Act* to impose a stay of proceedings in order to allow the debtor company to focus on restructuring efforts and to allow certain proceedings to proceed based on the prejudice to the parties.
2. Because the Petitioners have announced an intention to sell the Wolverine Mine along with other assets as a going concern through SISP, the successorship provisions of the *Labour Relations Code* apply and the Collective Agreement and all obligations owed to the Steelworker, including outstanding claims, will pass with the sale of the mine. In the experience of the Steelworkers it is more attractive to a potential buyer of a mine if all outstanding claims with the union representing employees of the mine have resolved prior to the sale.
3. There is minimal prejudice to the Petitioners in allowing the Northern Allowance JR and the Adjustment Plan JR to proceed. In both cases Wolverine has filed its petition or response and affidavit material, the only additional steps are to schedule and appear at the hearing for judicial review.
4. Due to the scheduling practice of the Vancouver Registry, the earliest that the judicial reviews could be set for a one day chambers application is in March 2016. This will not interfere with the restructuring efforts of the Petitioners.
5. Due to the nature of the judicial reviews, which focus on legal arguments reviewing established facts, very little resources of the Petitioners will be required to complete the judicial reviews. The parties have already retained counsel, assembled the records and materials, and defined the issues.
6. The Steelworkers' members are severely prejudiced if the stay is not lifted because Wolverine has already paid a portion of the damage award to the Steelworkers, but which the Steelworkers cannot distribute until the Adjustment Plan JR is decided.
7. It appears likely that the Petitioners may layoff the employees of Wolverine in April 2016 and due to the CCAA proceedings, Wolverine may not pay out the severance termination pay immediately or in full. Workers who have not received pay since April 2014 will be severely prejudiced by not receiving the money already paid to the Steelworkers in trust for them.
8. The issues of liability and quantum for the Northern Allowance and Adjustment Plan will need to be determined in any event. There is no prejudice in determining these issues sooner rather than later.
9. Allowing the judicial reviews to proceed will not prejudice other creditors as the actions are not taken in order to perfect a claim or security interest at the expense of other creditors.

**Part 6: MATERIAL TO BE RELIED ON**

1. Affidavit of Randy Gatzka, sworn December 24, 2015.

The Application Respondent estimates that the application will take: 60 minutes.

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

[ X ] The Application Respondent has not filed a document in this proceeding that contains an address for service. The Application Respondent's ADDRESS FOR SERVICE is:

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Date: January 4, 2016



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