



No. S-1510120
Vancouver Registry
Affidavit of D. Will #1
Sworn June 22, 2016

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

AFFIDAVIT #1 OF DANIEL EDWARD WILL

I, Daniel Edward Will, union business representative of 1777, Third Avenue Prince
George, British Columbia, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a business agent and third Vice-President for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-424 (the "Steelworkers") in Prince George, British Columbia and as such have personal knowledge of the facts hereinafter deposed to save and except where same are stated to be based on information and belief and where so stated I believe them to be true.

2. The Steelworkers is the certified bargaining agent for production employees at the Perry Creek Mine near Tumbler Ridge BC (also known as the Wolverine Mine) an open pit coal mine (the "Mine") operated by the Petitioners Walter Energy Inc. and Wolverine Coal Ltd. as Wolverine Coal Partnership ("Wolverine").

3. My assignment as a business agent for the Steelworkers includes collective bargaining and collective agreement administration with Wolverine, and other business, and attending arbitrations and Labour Relations Board hearings involving Wolverine.

4. I have over 30 years of experience working for unions in the mining industry in BC, Alberta, and Manitoba.

5. I regularly travel to Tumbler Ridge and communicate with Hugh Kingwell, Human Resources Director for Wolverine and the laid off employees of Wolverine.

6. Most of the Wolverine employees represented by the Steelworkers were laid off indefinitely on April 16, 2014 or shortly thereafter and have not been recalled to work since. Presently there is one bargaining unit employee who is working at the Mine.

7. On February 17, 2016, I received a letter from Mr. Kingwell stating that Wolverine did not intend to recall laid off employees to work, which would have the effect of terminating those employees starting on April 16, 2016 once each employee reached 24 months of layoff. A true copy of Mr. Kingwell's letter is attached as Exhibit "A" to this my Affidavit.

8. March 10, 2016, I received a letter from Mr. Kingwell confirming there were no plans to reopen the Mine and providing notice of group termination under the *Employment Standards Act* for 275 employees whose employment terminated between April and June 2016. A true copy of Mr. Kingwell's letter is attached as Exhibit "B" to this my Affidavit.

9. Because laid off employees were not provided any working notice of termination, Wolverine owes approximately 294 employees statutory termination pay (“Group Termination Pay”) under the *Employment Standards Act*.

10. The Steelworkers and Wolverine are parties to a collective agreement setting out the terms and conditions of employment for approximately 302 bargaining unit employees workers at the Mine (the “Collective Agreement”). A true copy of the Collective Agreement has been filed in these proceedings as Exhibit "A" to the Affidavit of Randy Gatzka #1.

11. The Collective Agreement contains the following provision regarding layoff:

11.05 Seniority rights shall cease, and employment shall be deemed terminated, for any employee who:

- voluntarily terminates employment;
- is discharged, and this discharge is not reversed through the grievance procedure;
- is laid off for more than twenty four (24) consecutive months;
- fails to return from an approved leave of absence within five (5) days without having a reasonable explanation;
- fails to return from layoff within fourteen (14) days of recall, pursuant to Article 11.09, after written notice is sent by registered mail, unless medically unfit to return.

12. The Collective Agreement contains the following provision regarding severance pay:

11.10 In the case of a permanent lay-off occurring after the ratification of this Collective Agreement, resulting in the termination of employment, as defined in the Employment Standards Act, the following will apply.

- (i) Two weeks pay or notice for every year of completed service, to a maximum of ten (10) weeks
- (ii) Employees shall be paid severance on the expiration of recall rights or upon termination of employment while on lay-off,
- (iii) Upon payment of severance the employee shall lose all recall rights.

13. Because laid off employees were not recalled within 24 months of layoff, Wolverine owes approximately 294 employees Collective Agreement severance pay (“Severance Pay”) in addition to Group Termination Pay.

14. Wolverine has not paid any employees either the Severance Pay or the Group Termination Pay due to the stay order under the *Companies Creditor's Arrangement Act* proceedings in this matter.

15. The Steelworkers filed grievances as a result of the failure to pay Severance Pay and Group Termination Pay (the "Severance Pay Grievance" and the "Group Termination Pay Grievance").

16. A true copy of the Group Termination Pay Grievance is attached as Exhibit "C" to this my Affidavit.

17. A true copy of the Severance Pay Grievance is attached as Exhibit "D" to this my Affidavit.

18. Wolverine and the Steelworkers have not dealt with the Severance Pay Grievance or the Group Termination Pay Grievance due to the stay order under the *Companies Creditor's Arrangement Act* proceedings in this matter. Wolverine has not provided the Steelworkers with any calculations of amounts owed to laid off employees for either Severance Pay or Group Termination Pay.

19. I communicate with and meet with laid off employees several times a month. With the price of coal low and a slow down in the energy sector generally, many have been unable to find employment either in Tumbler Ridge or elsewhere.

20. For employees that remained in Tumbler Ridge, while there was some hope that employees may be recalled to employment if the Mine reopened, with the expiration of their recall rights, there is no longer that right of recall. Due to the economic condition of Tumbler Ridge, housing prices have dropped and many laid off employees have been unable to sell homes.

21. Many laid off employees have expressed frustration that the stay in this matter has prevented the Steelworkers from resolving outstanding matters and prevented the Steelworkers from distributing the \$771,378.70 that the Steelworkers' lawyers are holding in trust as partial damages that the Labour Relations Board ordered Wolverine to pay on June 9, 2015 in BCLRB No. B106/2015 for violation of the *Labour Relations Code* when implementing the shutdown.

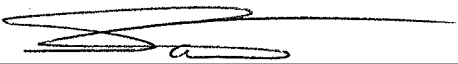
22. Many laid off employees who have remained living in Tumbler Rights have told me that they are relying on their Severance Pay and Group Termination Pay in order to meet their financial obligations as there are no employment opportunities there.

23. Based on my conversations with laid off employees and knowledge of the mining industry and financial circumstances of some of the laid off employees, I believe that any further delays in paying out the Severance Pay and Group Termination Pay will cause financial hardship for many laid off employees and families.

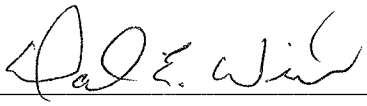
24. Other laid off employees have moved to other parts of Canada to seek work. Based on my experience in the mining industry the longer the delay in calculating and paying money to the laid off employees, including the Severance Pay and Group Termination Pay, the more difficult it will be to reach these employees.

SWORN BEFORE ME at Prince George,)

BC, this 22th day of June, 2016.)

)

A Commissioner for taking affidavits for)
British Columbia)



DANIEL EDWARD WILL

DL: 7167219

SARBJIT S. DEEPAK
Barrister & Solicitor
303-1777 3rd Avenue
Prince George, BC V2L 3G7
Ph: (250)563-9999
Fax: (250)563-9998

**"Witnessed as to
execution only; advice
neither sought nor given."**

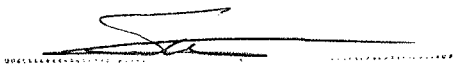


Walter Canadian Coal Partnership
P.O. Box 2140
Tumbler Ridge, BC V0C 2W0
Canada
Tel: (250) 242-3764
www.walterenergy.com

February 17, 2016

By Email

United Steelworkers, Local 1-424
1777 3rd Avenue
Prince George, BC
V2L 3G7

This is Exhibit "A" referred to in the
Affidavit of DAN WILL
Sworn before me at Prince George
This 22nd day of June 2016

A Commissioner for Affidavits
within British Columbia

Attn: Dan Will

Dear Sirs:

Re: Notice Pursuant to Section 54 of the Labour Relations Code

This letter is to advise the Union that the Employer has no present intention of recalling bargaining unit employees to work at the Wolverine Mine in the next several months. As a result, the Employer expects that the seniority and recall rights of those employees who were laid off in April 2014 will cease pursuant to Article 11.05 once their layoffs exceed 24 months in duration.

The Employer does not believe that notice is required pursuant to section 54 of the Code in these circumstances, but is aware that the Union takes a different view. As a result, and without prejudice to the Employer's position that notice is not required, this letter shall serve as notice pursuant to section 54 of the Code that the Employer expects the employment of certain bargaining unit employees to be deemed terminated pursuant to Article 11.05 beginning on April 16, 2016, as a result of the operation of the Collective Agreement and the passage of time.

Regards

Hugh Kingwell
HR Director, Canadian Operations
Walter Canadian Coal Partnership



Walter Canadian Coal Partnership
 P.O. Box 2140
 Tumbler Ridge, BC V0C 2W0
 Canada
 Tel: (250) 242-3764
 www.walterenergy.com

March 10, 2016

By Email

United Steelworkers, Local 1-424
 1777 3rd Avenue
 Prince George, BC
 V2L 3G7

Attn: Dan Will

Dear Sirs:

Re: Notice of Group Termination (Employment Standards Act, Section 64)

Further to our letter of February 17, 2016 advising that the Employer did not anticipate recalling the bargaining unit prior to the expiry of employees' recall rights, please accept this as notice of group termination of employment provided pursuant to Section 64 of the *Employment Standards Act* (the "Act").

There are 275 employees covered by the Act whose employment will be terminated between April 16, 2016 and June 16, 2016. There are a further 19 employees whose employment will be terminated on various dates between June 17, 2016 and August 9, 2017, as their recall rights expire. In total, 294 employees will be affected.

These terminations are the result of the continued idling of the Mine due to market conditions. Individual terminations of employment will be effective when each individual's layoff exceeds twenty-four months in duration.

As you know, on December 7, 2015 Walter Energy Canada Holdings Inc. and certain of its Canadian affiliates, including the Employer, ("Walter Canada") filed for and were granted creditor protection under the Companies' Creditors Arrangement Act (CCAA) and all rights and remedies against Walter Canada were stayed. As a result of the CCAA filing, no payment will be made to the employees at this time in relation to the termination of their employment.

At a later date, a claims procedure may be established to permit creditors of Walter Canada to prove any claims they may have. Former employees will be notified at the appropriate time if a claims procedure applicable to any claims they may have is established.

Yours truly,

Hugh Kingwell
 HR Director
 Walter Canadian Coal Partnership

This is Exhibit " B " referred to in the
 Affidavit of DAN WILL
 Sworn before me at Prince George
 This 22nd day of June 2016.

.....
 A Commissioner for taking Affidavits
 within British Columbia



GRIEVANCE REPORT

USW Local Union No. : 1-424

Grievance NO.4-14-16-1

Location WOLVERINE MINE

Date April 14/16

EMPLOYEE'S NAME	IDENTIFICATION NO.	DEPARTMENT	JOB TITLE
Group Grievance			

Use space below to write in other important Grievance information

This is Exhibit " C " referred to in the Affidavit of NAN WILL
 Sworn before me at Prince George
 This 22nd day of June 2016


 A Commissioner for taking Affidavits within British Columbia

Nature of Grievance:

- We have a grievance because the Employer has failed to provide appropriate notice or payment in lieu of notice of group termination as required by the Employment Standards Act. Pursuant to your March 11th email, because this is a group grievance with the jurisdiction of an Arbitrator, the Employer must deal with the Union in resolving these matters, not Individual Employees directly.

Settlement requested in Grievance :

- The Union requests that all Employees be made whole.

Agreement Violation:

- The total agreement and any legislation, acts or ordinances that may apply.

Signature of Aggrieved:

Signature of Union Representative:



GRIEVANCE REPORT

USW Local Union No. : 1-424

Grievance NO.4-14-16-2

Location WOLVERINE MINE


Date April 14/16

EMPLOYEE'S NAME	IDENTIFICATION NO.	DEPARTMENT	JOB TITLE
Group Grievance			

Use space below to write in other important Grievance information

This is Exhibit " D " referred to in the Affidavit of DAN WILL
 Sworn before me at Prince George
 This 22nd day of June 2016

Nature of Grievance:


 A Commissioner for taking Affidavits within British Columbia

- We have a grievance under the term of the Collective Agreement because the Company has not paid severance pay as per the Collective Agreement.

Settlement requested in Grievance :

- That all Severance pay be paid immediately.

Agreement Violation:

- Article II and the Collective Agreement as a whole and any applicable ; legislation, acts or ordinances.

Signature of Aggrieved:

Signature of Union Representative:

