

Court of Appeal File No.
Supreme Court File No. S1510120
Supreme Court Registry Vancouver

COURT OF APPEAL

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
(RESPONDENTS)

AND:

UNITED MINE WORKERS OF AMERICA 1974 PENSION PLAN AND TRUST

APPELLANT

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

Take notice that United Mine Workers of America 1974 Pension Plan and Trust hereby applies for leave to appeal to the Court of Appeal for British Columbia from the Order of the Honourable Madam Justice Fitzpatrick of the Supreme Court of British Columbia pronounced the 2nd day of December, 2016, at Vancouver, British Columbia dismissing the Appellant's application: (i) for disclosure of documents in the possession or control of the Respondents; and (ii) to strike the expert report of Marc Abrams filed by the Respondents in these proceedings.

The appeal is from a:

- Trial Judgment Summary Trial Judgment
 Order of a Statutory Body Chambers Judgment

2. If the appeal is from an appeal under Rule 18-3 or 23-6 (8) of the Supreme Court Civil Rules or Rule 18-3 or 22-7 (8) of the Supreme Court Family Rules, name the maker of the original decision, direction or order: not applicable.
3. Please identify which of the following is involved in the appeal:

- | | | |
|--|--|---|
| <input type="checkbox"/> Constitutional/Administrative | <input type="checkbox"/> Civil Procedure | <input checked="" type="checkbox"/> Commercial |
| Family - <input type="checkbox"/> Divorce | <input type="checkbox"/> <i>Family Law Act</i> | <input type="checkbox"/> Corollary Relief in a Divorce Proceeding |
| <input type="checkbox"/> Other Family | | |
| <input type="checkbox"/> Motor Vehicle Accidents | <input type="checkbox"/> Municipal Law | <input type="checkbox"/> Real Property |
| <input type="checkbox"/> Torts | <input type="checkbox"/> Equity | <input type="checkbox"/> Wills and Estates |

And further take notice that the Court of Appeal will be moved at the hearing of this application for an order that the Appellant is granted leave to appeal from the Order of Madam Justice Fitzpatrick and that the Appellant have its costs of this application in any event of the appeal.

Subject to receiving the reasons of the Honourable Madam Justice Fitzpatrick, the grounds of appeal are that:

- (a) the learned Chambers judge erred in law and in fact in concluding it was unnecessary to order disclosure of all relevant documents within the Respondents' possession or control as such documents relate to matters in question in these proceedings;
- (b) alternatively, the learned Chambers judge erred in law in denying the Appellant's application for disclosure of all relevant documents within the Respondents' possession or control;
- (c) the learned Chambers judge erred in law and in fact in concluding that the Monitor's United States counsel, Marc Abrams, was a properly qualified expert witness whose expert evidence was admissible in these proceedings; and
- (d) alternatively, the learned Chambers judge erred in law in concluding that the expert evidence of the Monitor's United States counsel Marc Abrams was admissible in these proceedings.

The hearing of this proceeding occupied 1.5 days.

Dated at Vancouver, British Columbia, this 22 day of December, 2016.



 Craig P. Dennis, Q.C.
 Solicitor for the Appellant

To the respondent:

Walter Canada Group

And to its solicitor:

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

Marc Wasserman, Mary Paterson and
Patrick Riesterer
Osler, Hoskin & Harcourt LLP

To the respondent:

The Monitor
KPMG Inc.
Philip J. Reynolds, Jordan Sleeth, and
Mike Schwartzentruber

And to its solicitor:

Wael Rostom, Peter Reardon, and Caitlin
Fell
McMillan LLP

To the respondent:

United Steelworkers, Local 1-424

And to its solicitor:

Craig Bavis
Victory Square Law Office

To the service list:

See attached Schedule "B"

This Notice of Leave to Appeal is given by

Dentons Canada LLP

whose address for service is:

20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8
Fax: 604-683-5214

To the respondent(s):

IF YOU INTEND TO PARTICIPATE in this proceeding, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Notice of Appearance" (Form 2 of the Court of Appeal Rules) in a Court of Appeal registry and serve the notice of appearance on the appellant WITHIN 10 DAYS of receiving this Notice of Application for Leave to Appeal.

IF YOU FAIL TO FILE A NOTICE OF APPEARANCE

- (a) you are deemed to take no position on the application, and
- (b) the parties are not obliged to serve you with any further documents related to the application.

The filing registries for the British Columbia Court of Appeal are as follows:

Central Registry:

B.C. Court of Appeal
Suite 400, 800 Hornby Street
Vancouver BC V6Z 2C5

Other Registries:

B.C. Court of Appeal
The Law Courts
P.O. Box 9248 STN PROV GOVT

850 Burdett Ave
Victoria BC V8W 1B4

B.C. Court of Appeal
223 – 455 Columbia Street
Kamloops BC V2C 6K4

Inquiries should be addressed to (604) 660-2468 Fax filings: (604) 660-1951

SCHEDULE "A"

Petitioners

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

Partnerships

1. Walter Canadian Coal Partnership
2. Wolverine Coal Partnership
3. Brule Coal Partnership
4. Willow Creek Coal Partnership

SCHEDULE "B"

SERVICE LIST

| | |
|---|---|
| <p>Osler, Hoskin & Harcourt LLP Box 50, 1 First Canadian Place Toronto, Ontario, Canada M5X 1B8</p> <p>Marc Wasserman Email: mwasserman@osler.com Tel: 416-862-4908</p> <p>Mary Paterson Email: mpaterson@osler.com Tel: (416) 862-4924</p> <p>Emmanuel Pressman Email: epressman@osler.com</p> <p>Patrick Riesterer Email: priesterer@osler.com</p> | <p>Counsel for the Petitioners</p> |
| <p>Longview Communications Inc. Suite 612 – 25 York Street Toronto, ON Canada M5J 2V5</p> <p>Joel Shaffer Email: jshaffer@longviewcomms.ca</p> <p>Suite 2028 – 1055 West Georgia Vancouver, BC Canada V6E 3P3</p> <p>Alan Bayless Email: abayless@longviewcomms.ca</p> <p>Robin Fraser Email: rfraser@longviewcomms.ca</p> | <p>Communications Advisor to the Petitioners</p> |
| <p>DLA Piper (Canada) LLP Suite 2800, Park Place 666 Burrard St Vancouver, British Columbia V6C 2Z7</p> <p>Mary Buttery Email: mary.buttery@dlapiper.com Tel: 604-643-6478</p> | |

| | |
|--|------------------------------------|
| <p>Lance Williams Email: lance.williams@dlapiper.com Tel: 604-643-6309</p> <p>Copy to: susan.wood@dlapiper.com sue.danielisz@dlapiper.com</p> | |
| <p>KPMG Inc. 333 Bay Street, Suite 4600 Toronto, ON M5H 2S5</p> <p>Philip J. Reynolds Email: pjreynolds@kpmg.ca</p> <p>Jorden Sleeth Email: jsleeth@kpmg.ca</p> <p>Mike Schwartzentruber Email: mikes@kpmg.ca</p> <p>KPMG Inc. PO Box 10426 777 Dunsmuir Street Vancouver, BC V7Y 1K3 Canada</p> <p>Anthony Tillman Email: atillman@kpmg.ca</p> <p>Mark Kemp-Gee Email: mkempgee@kpmg.ca</p> | <p>Monitor</p> |
| <p>McMillan LLP Royal Centre, 1055 West Georgia Street Suite 1500, PO Box 11117</p> <p>Wael Rostom Email: wael.rostom@mcmillan.ca Tel. 416-865-7790</p> <p>Peter Reardon Email: peter.reardon@mcmillan.ca</p> <p>Caitlin Fell Email: caitlin.fell@mcmillan.ca</p> | <p>Counsel to KPMG Inc.</p> |

| | |
|---|--|
| <p>Copy to: Lori Viner Email: lori.viner@mcmillan.ca</p> | |
| <p>Walter Energy, Inc. 3000 Riverchase Galleria Birmingham, AL 35244</p> | <p>Parent company of the Petitioners</p> |
| <p>Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, New York 10019 Fax: 212-757-3990 Tel: 212-373-3000</p> <p>Stephen Shimshak, Email: sshimshak@paulweiss.com</p> <p>Kelly Cornish, Email: kcornish@paulweiss.com</p> <p>Claudia Tobler Email: ctobler@paulweiss.com</p> <p>Daniel Youngblut Email: dyoungblut@paulweiss.com</p> <p>Michael Rudnick Email: mrudnick@paulweiss.com</p> | <p>Counsel to Walter Energy, Inc.</p> |
| <p>White & Case LLP 1155 Avenue of the Americas New York, New York 10036-2787 Fax: 212.819.8200 Tel: 212.819.8567</p> <p>Scott Greissman Email: sgreissman@whitecase.com</p> <p>Elizabeth Feld Email: efeld@whitecase.com</p> | <p>US Counsel to Morgan Stanley Senior Funding, Inc., as Administrative Agent and Collateral Agent under the First Lien Credit Facility</p> |

| | |
|---|--|
| <p>Stikeman Elliott LLP 199 Bay Street, Suite 4900 Toronto, Ontario M5L 1B9</p> <p>Tel: 416-869-6820 Fax: 416-947-9477</p> <p>Kathryn Esaw Email: kesaw@stikeman.com</p> | <p>Canadian Counsel to Morgan Stanley Senior Funding, Inc., as Administrative Agent and Collateral Agent under the First Lien Credit Facility</p> |
| <p>Akin Gump Strauss Hauer & Feld LLP One Bryant Park Bank of America Tower New York, New York 10036-6745 Fax: 212-872-1002 Tel: 212-872-8076</p> <p>Ira Dizengoff, Email: idizengoff@akingump.com</p> <p>Lisa G. Beckerman, Email: lbeckerman@akingump.com</p> <p>Maurice L. Brimmage Email: mbrimmage@akingump.com</p> <p>James Savin Email: jsavin@akingump.com</p> | <p>U.S. Counsel to the Steering Committee of First Lien Creditors of Walter Energy, Inc.</p> |
| <p>Cassels Brock & Blackwell LLP 2200 HSBC Building, 885 West Georgia Street, Vancouver, BC, V6C 3E8 Fax: 604 691 6120 Tel: 604 691 6121</p> <p>Steven Dvorak Email: sdvorak@casselsbrock.com</p> <p>Ryan Jacobs Email: rjacobs@casselsbrock.com</p> <p>Natalie Levine Email: nlevine@casselsbrock.com</p> <p>Matthew Nied Email : mnied@casselsbrock.com</p> | <p>Canadian Counsel to the Steering Committee of First Lien Creditors of Walter Energy, Inc.</p> |

| | |
|---|--|
| <p>Victory Square Law Office 710 – 777 Hornby Street Vancouver, BC V6Z 1S4</p> <p>Craig Bavis Email: cbavis@vslo.bc.ca Tel: 604-684-8421 Fax : 604-684-8427</p> <p>Jeff Sanders Email: j.sanders@vslo.bc.ca</p> | <p>Canadian Counsel to the United Steelworkers, Local 1-424</p> |
| <p>Dentons Canada LLP 20th Floor, 250 Howe Street Vancouver, BC Canada V6C 3R8</p> <p>John R. Sandrelli Email: john.sandrelli@dentons.com Tel : 604-443-7132</p> <p>Craig Dennis Email : craig.dennis@dentons.com Tel : 604-648-6507</p> <p>Tevia Jeffries Email: tevia.jeffries@dentons.com</p> <p>Miriam Dominguez Email: miriam.dominguez@dentons.com</p> | <p>Canadian Counsel to the United Mine Workers of America 1974 Pension Plan and Trust</p> |
| <p>Morgan Lewis & Bockius LLP One Federal St. Boston, MA 02110-1726 United States Julia Frost-Davies Email: julia.frost-davies@morganlewis.com</p> <p>Morgan Lewis & Bockius LLP 1701 Market St. Philadelphia, PA19103-2921 United States</p> <p>John C. Goodchild, III Email: john.goodchild@morganlewis.com</p> | <p>US Counsel to the United Mine Workers of America 1974 Pension Plan and Trust</p> |

| | |
|---|--|
| <p>Rachel Jaffe Mauceri Email: rmauceri@morganlewis.com</p> | |
| <p>Mooney, Green, Saindon, Murphy & Welch, P.C. 1920 L Street, NW, Suite 400 Washington, DC 20036</p> <p>Paul Green Email: pgreen@mooneygreen.com</p> <p>John Mooney Email: jmooney@mooneygreen.com</p> | <p>US Co- counsel to the United Mine Workers of America 1974 Pension Plan and Trust</p> |
| <p>Ministry of Justice and Attorney General Legal Services Branch P.O. Box 9289 Stn Prov Govt 4th Floor – 1675 Douglas Street Victoria, BC V8W 9J7 Fax: 250-387-0700</p> <p>David Hatter Tel: 250-387-1274 Email: David.Hatter@gov.bc.ca AGLSBRevTax@gov.bc.ca</p> <p>Aaron Welch Tel: 250-356-8589 Email: Aaron.Welch@gov.bc.ca AGLSBRevTax@gov.bc.ca</p> | <p>Counsel to Her Majesty the Queen in right of the Province of British Columbia</p> |
| <p>Department of Justice Government of Canada 900 – 840 Howe Street Vancouver, BC V6Z 2S9</p> <p>Neva Beckie Email: neva.beckie@justice.gc.ca</p> | <p>Counsel to Her Majesty the Queen in right of Canada</p> |

| | |
|---|--|
| <p>PJT Partners LP 280 Park Ave. New York, NY 10017</p> <p>Steve Zelin Email: zelin@pjtpartners.com</p> | <p>Financial Advisor</p> |
| <p>Blue Tree Advisors 32 Shorewood Place Oakville, ON L6K 3Y4</p> <p>William E. Aziz Email: baziz@bluetreadvisors.com</p> | <p>Chief Restructuring Officer</p> |
| <p>Miller Thomson LLP Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1</p> <p>Jeffrey Carhart Email: jcarhart@millერთhompson.com</p> | <p>Counsel to Mitsui Matsushima Co., Ltd.</p> |
| <p>Miller Thomson LLP Barristers and Solicitors 840 Howe Street, Suite 1000 Vancouver, BC V6Z 2M1</p> <p>Heather L. Jones Tel. 604-643-1231 (direct) Tel. 604-687-2242 (main) Email: hjones@millერთhompson.com</p> | <p>Counsel to Kevin James</p> |
| <p>Caterpillar Financial Services Limited 5575 North Service Road, Suite 600 Burlington, ON I7I 6M1 c/o Caterpillar Financial Services Corporation (Global Headquarters) 2120 West End Avenue Nashville, TN 37207</p> <p>Fax: 615-341-8578 Main Phone Line: 1-800-651-0567</p> | |

| | |
|--|-------------------------|
| <p>Transportation Lease Systems Inc. 205, 10458 Mayfield Road Edmonton AB T5P 4P4</p> | |
| <p>XEROX Canada Ltd. 33 Bloor St. E., 3rd Floor Toronto, ON M4W 3H1</p> <p>Stephanie Grace Email: stephanie.grace@xerox.com</p> | |
| <p>Brandt Tractor Ltd. 9500 190th ST. Surrey B.C. V4N 3S2</p> | |
| <p>Conuma Coal Resources Limited 15 Appledore Lane, P.O. Box 87 Natural Bridge, Virginia 24578</p> <p>Tom Clarke Email: tom.clarke@kissito.org</p> <p>Chuck Ebetino Email: cebetino@erpfuels.com</p> <p>Jason McCoy Email: jmccoy@erpfuels.com</p> <p>Bill Hunter Email: whunter1@optonline.net</p> <p>Robert Carswell Email: bobcarswellus@outlook.com</p> <p>Joe Bean (ERP Internal Counsel) Email: jowabean@gmail.com</p> <p>Conuma Coal Resources Limited P.O. Box 305 Madison, WV 25130</p> <p>Ken McCoy Email: kmccoy@erpfuels.com</p> | <p>Purchaser</p> |

| | |
|--|--|
| <p>Dentons Canada LLP 15th Floor, Bankers Court 850 – 2nd Street SW Calgary, Alberta T2P 0R8 David Mann Email: david.mann@dentons.com</p> | <p>Counsel for Conuma Coal Resources Limited (Purchaser) and Guarantors</p> |
| <p>ERP Compliant Fuels, LLC ERP Compliant Coke, LLC Seneca Coal Resources, LLC Seminole Coal Resources, LLC</p> <p>Tom Clarke Email: tom.clarke@kissito.org</p> | <p>Guarantors</p> |
| <p>Lamarche & Lang 505 Lambert Street Whitehorse, Yukon Y1A 1Z8</p> <p>Murray J. Leitch Email: mleitch@lamarchelang.com</p> | <p>Counsel for Pelly</p> |
| <p>Parkland Fuel Corporation #5101, 333 – 96th Avenue NE Calgary, Alberta T3K 0S3</p> <p>Christy Elliott Email: Christy.elliott@parkland.ca</p> | <p>Legal Counsel for Parkland</p> |
| <p>Canada Anglo American</p> <p>Federico G. Velásquez Email: Federico.velasquez@angloamerican.com</p> <p>Jenny Yang Email: jenny.yang@angloamerican.com</p> | |
| <p>Malaspina Consultants</p> <p>Marianna Pinter Email: Marianna@malaspinaconsultants.com</p> | |
| <p>Boale Wood</p> <p>John McEown Email: jmceown@boalewood.ca</p> | |

| | |
|---|-------------------------------------|
| Fasken Martineau John Grieve Email: jgrieve@fasken.com | Legal Counsel for Boale Wood |
| Cavalon Capital Corp. 436 Lands End Rd. North Saanich, BC V8L 5L9 Tel: 778-426-3329 Fax: 778-426-0544 <u>Managing Directors</u> David Tonken Email: tonken@icrossroads.com Greg Matthews Email : gregmatthews@shaw.ca | |