

This is the 2nd affidavit
of Randy Gatzka in this case
and was made on 31/JUL/2017

NO. S1510120
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 NEW
WALTER ENERGY CANADA HOLDINGS, INC. NEW WALTER CANADIAN COAL
CORP., NEW BRULE COAL CORP., NEW WILLOW CREEK COAL CORP., NEW
WOLVERINE COAL CORP. AND CAMBRIAN ENERGYBUILD HOLDINGS ULC

PETITIONERS

AFFIDAVIT

I, **RANDY GATZKA**, Union Staff Representative of #300 – 3920 Norland Avenue
Burnaby, British Columbia, AFFIRM THAT:

1. I am a staff representative for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, District 3 ("**District 3**"). District 3 is responsible for the union's locals in Western Canada, including Local 1-424. I have represented the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-424 (the "**Steelworkers**") in their dealings with Walter Canada, including organizing the Steelworker's certification campaign, bargaining the most recent collective agreement between the Steelworkers and Walter Canada and overseeing the administration of that collective agreement. As such, I 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.

Background

2. The Steelworkers represented approximately 300 employees who worked at the Walter Canada Group's Wolverine Mine in Tumbler Ridge, British Columbia (the "**Mine**").

3. On April 15, 2014, the Walter Canada Group closed the Mine's operations without notice to the Steelworkers or the employees. After two years, these employees were not recalled and almost all were terminated when their recall rights expired.

4. I was responsible for overseeing the Steelworkers' efforts to recover monies owed to the Mine's employees.

Claims against the Walter Canada Group

5. The Steelworkers has Allowed Claims of \$12.8 million, as that term is defined in Schedule "B" of the Claims Process Order of Madam Justice Fitzpatrick pronounced August 16, 2016, against the Walter Canada Group. The Steelworker's Allowed Claims include:

- (a) damages for violation of s. 54 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244, in failing to provide notice of shut down and layoff at the Mine;
- (b) severance pay pursuant to collective agreement payable to the 294 employees of the Mine who were not recalled within two years; and
- (c) group termination pay pursuant to s. 64 of the *Employment Standards Act*, R.S.B.C. 1996, c. 113.

6. While \$781,719.32 of the amount owed as a result of s. 54 violations were paid into trust and are being distributed subject to Employment Insurance claw back, the vast majority of the Allowed Claims remain unpaid.

Agreement with the 1974 Plan Regarding Payment of the Allowed Claims

7. Since the Mine shut down, I have had conversations with former Mine employees expressing their frustration and the hardship that they have suffered due to the delay in the payment of the Allowed Claims.


8. Recently the Steelworkers reached an agreement with the United Mine Workers of America 1974 Pension Plan and Trust (the "1974 Plan") following months of discussion. The key element of the agreement between the Steelworkers and the 1974 Plan, was that the 1974 Plan would subordinate its claim to the Steelworkers regardless of the outcome of the outstanding appeal of *Walter Energy Canada Holdings, Inc. (Re)*, B.C.C.A. Vancouver Registry No. CA44448.

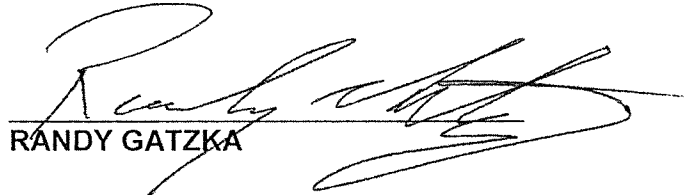
9. Now shown to me and attached hereto as **Exhibit "A"** is a copy of a letter dated July 30, 2017, from John Sandrelli, counsel for the 1974 Plan, to Craig D. Bavis, counsel for the Steelworkers, reflecting the terms of this settlement as agreed to between the 1974 Plan and the Steelworkers.

10. As the staff representative dealing with the Mine employees and the CCCA process since the Mine shutdown, I believe the payment of the Allowed Claims in these proceedings will ameliorate the significant and mounting impact of the closure of the Mine on its former employees.

11. I make this Affidavit in support of the joint application of the 1974 Plan and the Steelworkers.

SWORN (OR AFFIRMED) BEFORE ME at
Vancouver, British Columbia, on
31 /JUL/2017.


A Commissioner for taking Affidavits within
British Columbia


RANDY GATZKA



Jeff Sanders, Lawyer
Suite 710-777 Hornby Street
Vancouver, BC V6Z 1S4
604-684-8421



John R. Sandrelli
john.sandrelli@dentons.com

Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver, BC, Canada V6C 3R8

大成 Salans FMC SNR Denton McKenna Long
dentons.com

July 30, 2017

DELIVERED

Craig D. Bavis
Victory Square Law Office
710 - 777 Hornby St.
Vancouver BC V6Z 2H7

Dear Sir:

RE: **Settlement Agreement Between the United Mine Workers of America 1974 Pension Plan and Trust (the "1974 Plan") and the United Steelworkers, Local 1-424 (the "Steelworkers")**

The purpose of this letter is to reflect the terms of the settlement agreement reached between the 1974 Plan and the Steelworkers in the proceedings of *Walter Energy Canada Holdings, Inc. (Re)*, S.C.B.C. Vancouver Registry No. S-1510120 (the "Proceedings").

Notwithstanding the outstanding appeal in *Walter Energy Canada Holdings, Inc. (Re)*, B.C.C.A. Vancouver Registry No. CA44448 (the "Appeal"), the 1974 Plan will agree to the payment of all current Allowed Claims, including the Steelworkers' Employee Claims, as those terms are defined in the Claims Process Order pronounced by the Honourable Madam Justice Fitzpatrick on August 16, 2016. To facilitate that result, the 1974 Plan will agree to subordinate its Claim (regardless of outcome). That is, if it ultimately succeeds in its Claim, it will nonetheless be bound by its agreement to subordinate. The Steelworkers will otherwise be able to pursue its unresolved Claims through the Claims Process.

Regarding the costs awarded to the Steelworkers in the 1974 Plan Order of the Honourable Madam Justice Fitzpatrick, pronounced May 1, 2017, the 1974 Plan will further agree to support an Order that costs be paid out of the estate and fixed at \$75,000.

Neither party will seek costs against the other in the Appeal.

Yours truly,
Dentons Canada LLP

John R. Sandrelli
Managing Partner, Vancouver

JRS/ws

28794052_2|NATDOCS

This is Exhibit "A" referred to in the statutory declaration of Randy Gatzka declared before me at Vancouver in the Province of British Columbia this 31 day of July, 2017.

A Commissioner for taking affidavits within British Columbia