

This is the 1st affidavit
of David Austin in this case
and it was made on February 27, 2017.

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 OR ARRANGEMENT OF
WALTER ENERGY CANADA HOLDINGS, INC.
AND THE OTHER PETITIONERS LISTED ON SCHEDULE "A"

AFFIDAVIT

I, **DAVID AUSTIN**, Businessman, of Suite 200, 595 Howe Street, Vancouver, British Columbia, MAKE OATH AND SWEAR THAT:

1. I was one of the founders of Western Canadian Coal Corp. ("Western"). I was a director and maintained a substantial shareholding in Western from the time it was formed in November 1997 until I resigned in June, 2003 and as such have personal knowledge of the facts hereinafter deposed to, save and except where the same are stated to be based on information and belief, and where so stated I verily believe such matters to be true.
2. I was the director of Western responsible for instructing counsel to draft the Royalty Sharing Agreement between Western and Kevin James, David Fawcett and Mark Gibson in 2000 ("RSA"). At that time Mr. James, Mr. Fawcett and I were the three directors of Western and I was the sole disinterested director as it related to the RSA and therefore had the sole responsibility for instructing counsel with regard to its drafting on behalf of Western.
3. In the period from 1997 to 2000, the day to day management responsibilities for Western were shared primarily amongst David Fawcett, Kevin James and myself. David Fawcett was the President and CEO, and took care of most of the day to day administration. Kevin James was chiefly responsible for managing and assessing geological work (with assistance from consultants hired from time to time on a contract basis). My principal responsibility was fundraising and investor relations.
4. Before forming Western, James, Fawcett and I (and others) formed Western Coal Corporations ("Subco") – a private company formed to explore and develop coal properties in British Columbia. The principal project of Subco was exploration and

development of the Belcourt property, a group of coal licences located approximately 80km southeast of Tumbler Ridge, British Columbia. Western was formed as a vehicle to complete a public financing to further explore and develop the Belcourt property. Subco became a wholly owned subsidiary of Western in the course of the IPO.

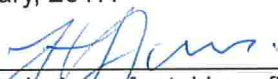
5. The planned public financing was completed in early 1999. From 1997 to 2000 international coal prices were depressed and the British Columbia coal industry was in recession. It was extremely difficult to raise investment capital for any kind of coal exploration or development work. As the person primarily responsible for fundraising for Western this was an ongoing concern for me.
6. Consequently, towards the end of 1999 I felt Western was in a precarious financial position. After expenses I believed Western would have barely enough to pay the fees necessary to maintain the existing licences for the coming year leaving no funds for development and I was having no success raising investor funds given the depressed markets.
7. Fawcett and James saw the recessionary climate in the industry as an opportunity as other operations were abandoning operations in northeast British Columbia and allowing their existing coal licences to lapse. Fawcett and James informed me they spent considerable time identifying and assessing promising coal properties which may become available.
8. In early 1999 James identified a promising group of properties (known as the Burnt River property) which was going to be abandoned by Teck Corporation. At this time Western did not have the funds for acquisitions. James informed me that he applied for these licences immediately after Teck forfeited them using personal funds of James and Fawcett.
9. James subsequently agreed to assign the Burnt River Licences to Subco in return for his expenses of acquisition.
10. Sometime in 1999 James and Fawcett identified the West Brazion group of licences as being good acquisitions and discussed with me the prospect of Western acquiring these licences. I determined that Western did not have the money to do so. I was informed that James and Fawcett obtained these licences using their personal funds. At this time I was still not able to find new investors for Western given the economy.
11. Later in 1999 or in early 2000 James and Fawcett advised me of more coal properties they thought Western should acquire which consisted of a group of licences known collectively as the Wolverine Group located near the Quintette mine. James and Fawcett told me that at least one of the properties had undergone considerable development work by Teck Corporation but had been abandoned for some time and it was possible that Teck was going to forfeit other properties in the area which would represent an opportunity to acquire significant holdings with good resource potential and a desirable location being immediately adjacent to BC Rail's Tumbler Ridge line.

12. Western did not have the funds to acquire these licences and I spoke to James and Fawcett about terms that Western may enter into to purchase and whether Fawcett and James might be prepared to personally finance the acquisition for Western. Fawcett and James did not have enough personal funds for the Wolverine licences and Mark Gibson was willing to invest.
13. Around this time I negotiated an option agreement with Fawcett and James under which they granted an option to Western to acquire the West Brazion licences by reimbursing them their out of pocket costs and granting them a 1% royalty.
14. Gibson was willing to invest to obtain the Wolverine licences but was concerned that if Western chose to focus on developing particular licences that he hadn't funded he may receive no compensation for his contribution. In the course of financing the additional Wolverine licences, we reached a broader agreement with respect to all of the new licences applications being financed by Fawcett, James and Gibson which eventually became the RSA.
15. The concept of the pooled royalty sharing agreement was agreed to in February 2000 but was not drafted or signed until later that year.
16. I was the individual solely responsible for making the agreement on behalf of Western and later to instruct Mr. Devlin, counsel for the company, to draft the agreement.
17. Through the RSA Western was able to acquire what have subsequently proved to be extremely valuable licences. The transaction involved very little risk to Western since no security was required and there would be no cost of borrowing unless any of the properties acquired could be successfully developed into a producing mine.
18. Under the RSA Fawcett and James agreed to assign the West Brazion licences to Western and Gibson agreed to surrender the interests he had negotiated in the initial Wolverine licence applications he had funded. The three of them would contribute whatever additional work or funds were required for the remaining Wolverine Group applications and in return they would receive a single 1% royalty on production from any of these properties to be shared between them in proportion to their respective contributions. The properties were pooled into the RSA so that each of them could share in the royalty no matter which property went into production first.
19. Western was to receive the financing it needed and the licences for the Wolverine mines, royalties would only be owed once the mines were in production so the risk was low and the percentage of the royalty was low. In exchange the royalty holders took the risk that the mines would be brought into production, they were to obtain an interest in the coal produced from these mines for the lifetime of the mine which is why they were willing to accept a low percentage royalty, their interest was to run with the mine and were to be assigned if the licences were sold, and if ever the licences were not going to be maintained by Western, Western was to pass back the licences in good stead to the Royalty Holder. The RSA was to ensure that the royalty holders had an interest in the coal reserves subject to these licences for the life of the reserves including licences in the future on these reserves to keep it an ongoing

mine. This was the basis upon which these three financed the remaining Wolverine Licences applications

- 20. At that time I considered any potential rewards that the royalty holders might realize in future to be reasonably proportional to the risks they were undertaking and the substantial benefits which would accrue to Western if any of the licences could be brought into production. If Western did not do this deal, Western would have gone bankrupt.
- 21. I particularly spoke to counsel about what would occur if Western sold the properties. I was told the royalty agreement provided that the royalty would stay with the properties no matter who owned the licences.
- 22. I relied upon our corporate solicitor Pat Devlin to prepare appropriate documentation on behalf of Western to give effect to the terms of the RSA as set out above. We trusted and understood that the RSA as drafted by Mr. Devlin reflected these wishes and the intent of the parties to the RSA.
- 23. The purpose and effect of the RSA was essential to the understanding and agreement that led to the RSA which influenced the percentage of the royalty, the timing as to when the royalty would start and the benefits received by the company as a result of these concessions made by the royalty holders.
- 24. Later in the spring of 2000 we were able to arrange new private placements financing for Western and I believe that our acquisition of the new properties under the RSA was essential and instrumental to Western's ability to raise new financing.
- 25. Without the RSA the company would have folded.

SWORN BEFORE ME at Vancouver,
British Columbia, this 27 day of
February, 2017.



 A commissioner for taking affidavits
 for British Columbia

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) **DAVID AUSTIN**
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AFFIDAVIT #1 of DAVID AUSTIN
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