



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. c. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT  
OF WALTER ENERGY CANADA HOLDINGS, INC., AND THE OTHER PETITIONERS  
LISTED IN SCHEDULE "A" TO THE INITIAL ORDER

PETITIONERS

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**Application Response of the Respondent Steelworkers to the 1974 Plan's Application**

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

TO: The Service List

THIS IS A RESPONSE TO: the Notice of Application of United Mine Workers of America 1974 Pension Plan and Trust ("1974 Plan"), Applicant filed December 2, 2016.

**Part 1: ORDERS CONSENTED TO**

1. The following paragraphs in the 1974 Plan's Notice of Application: None.

**Part 2: ORDERS OPPOSED**

2. The following paragraphs in the 1974 Plan's Notice of Application: 1, 2.

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

3. The following paragraphs in the 1974 Plan's Notice of Application: None.

**Part 4: FACTUAL BASIS**

4. The Respondent Steelworkers relies on facts set out in Part 1 of the Respondent Steelworker's Second Amended Notice of Civil Claim filed November 16, 2016.
5. The Respondent Steelworkers also relies on those facts set out in Walter Energy Inc.'s (the "Petitioners") Statement of Uncontested Facts dated November 14, 2016.
6. On November 16, 2016 the Petitioners filed a Notice of Application for summary trial of four preliminary issues (the "Summary Trial Application").
7. The Petitioners set out the following issues in the Summary Trial Application:
  - a. Under the Canadian conflict of laws rules, the 1974 Plan's Claim is governed by Canadian substantive law which does not recognize the 1974 Plan's Claim for the purposes of *CCAA* proceedings in this Court.
  - b. In the alternative, if the 1974 Plan's Claim is governed by United States substantive law (including *ERISA*), as a matter of United States law controlled group liability for withdrawal liability related to a multi-employer pension plan under *ERISA* does not extend extraterritorially to Canada.

- c. In the further alternative, if the 1974 Plan's Claim is governed by United States substantive law (including *ERISA*), and *ERISA* applies extraterritorially, that law is unenforceable by this Court as a penal, revenue or other public law of the United States.
  - d. In the further alternative, if the 1974 Plan's Claim is governed by United States substantive law (including *ERISA*) and *ERISA* applies extraterritorially, that law is unenforceable by this Court because it conflicts with Canadian public policies.
8. The Respondent Steelworker's position was set out in its response to the Summary Trial Application, filed November 24, 2016.
9. On November 23, 2016, the 1974 Plan filed a Notice of Application seeking (i) an order striking the expert report of Marc Abrams filed by the Petitioners; and (ii) an order for further discovery from the Petitioners.
10. On December 2, 2016, the Honourable Madam Justice Fitzpatrick dismissed the 1974 Plan's November 23, 2016 application.

**Part 5: LEGAL BASIS**

11. The Respondent Steelworkers support the Petitioner's Summary Trial Application and say that the issues therein are suitable for Summary Trial.
12. The Supreme Court of Canada has recently discussed the importance of resolving matters summarily stated that a "culture shift" is required to allow judges to actively manage the legal process in line with the principle of proportionality
- Hryniak v. Mauldin* 2014 SCC 7, applied in *Morin v. 0865580 B.C. Ltd.*, 2015 BCCA 502 at para. 16**

13. Cases should be decided summarily if the court is able to find the facts necessary for that purpose, even though there may be disputed issues of fact and law, provided that the judge does not find it is unjust to do so.

***Inspiration Management Ltd. v. McDermid St. Lawrence Ltd. (1989), 36 B.C.L.R. (2d) 202 (C.A.)***

14. The factors considered by B.C. courts to determine whether or not it would be unjust to proceed by summary trial were listed in *Turkson v. TD Direct Investing, a Division of TD Waterhouse Canada Inc.* 2016 BCSC 732, at para. 65:

[...]in considering whether it would be unjust to proceed summarily, the courts have typically considered the complexity of the matter, any urgency and prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings, whether credibility is a critical factor in the determination of the dispute, whether the summary trial may create an unnecessary complexity in the resolution of the dispute, and whether the application would result in litigating in slices.

15. In these circumstances, it would not be unjust to proceed summarily. There is significant urgency to these proceedings; the cost of an expansive conventional trial would be very high; and, the legal issues can be adjudicated on affidavit evidence. Any further delay would also cause considerable hardship to the Respondent Steelworker's members. Many of the Respondent Steelworker's members have not been paid since April 2014 and have waited nearly three years to find out whether their claim for statutory severance and termination pay is paid in full or compromised.

16. As was ordered by the Honourable Madam Justice Fitzpatrick on December 2, 2016, further discovery from the Petitioners is not required for the fair adjudication of the issues set out in the Summary Trial Application. The facts required to determine the preliminary issues raised in the Summary Trial Application are before this Honourable Court.

17. Furthermore, the Petitioners are not seeking to “litigate in slices”. Rather, there are preliminary issues of law that should be determined in the interests of judicial economy. If this Honourable Court agrees with the arguments set out above, there will be no further requirement for the 1974 Plan to continue its claim against the Petitioners. The administration of justice, as it affects the parties and the orderly use of court time, will be enhanced by dealing with these issues on a summary trial.

18. If the 1974 Plan’s Application is allowed, the Respondent Steelworkers will raise further legal arguments to address those remaining issues raised in the Respondent Steelworkers' Second Amended Response to the Notice of Civil Claim filed in this matter, but not which are not addressed in the scope of the Summary Trial Application.

19. These legal issues include

- a. the reasonableness and equity of the *CCAA* distribution plan if the 1974 Plan's Claim is allowed;
- b. the appropriateness of different classes and priorities of claims for the *CCAA* distribution process in this matter; and
- c. the status of the Respondent Steelworkers’ Claim arising under a constitutionally protected collective bargaining process and the application of section 2(d) of the *Charter of Rights and Freedoms* values.

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

The Respondent Steelworkers will rely upon:

- (i) The pleadings and affidavit and supporting materials filed in the *CCAA* proceedings in this matter to date;
- (ii) The Petitioners’ Book of Evidence filed in support of the Summary Trial Application; and

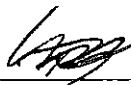
- (iii) Materials produced by the Applicant or other Respondents in support of this Application including expert reports.

The Respondent Steelworkers do not offer a time estimate for this application.

[X ] The Respondent Steelworkers have filed in this proceeding a document that contains the application respondent's address for service. The Respondents Steelworkers ADDRESS FOR SERVICE is:

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Date: December 9, 2016

  
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