

Court rejects U.S. pension claim in Canadian CCAA proceeding

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In a [precedent-setting decision](#), Justice Fitzpatrick of the British Columbia Supreme Court held that a U.S. multi-employer pension plan's claim for \$1.25 billion against Canadian *Companies' Creditors Arrangement Act* (CCAA) debtors was invalid. The claim was asserted pursuant to the U.S. long-arm controlled group liability provisions in the *Employee Retirement Income Security Act of 1974* (ERISA).^[1] Justice Fitzpatrick held that Canadian law, not ERISA, governed the pension plan's claim.

Facts

Walter Canada Group is a group of coal mining companies and partnerships, all of which were established under Canadian corporate law. Walter Canada Group is wholly owned by a U.S. parent company, Walter U.S.

Walter Canada Group filed for CCAA protection in Canada, while Walter U.S. and its American subsidiaries entered proceedings under Chapter 11 of the *U.S. Bankruptcy Code*.

One of Walter U.S.'s American subsidiaries, Jim Walter Resources, had unfulfilled pension withdrawal liabilities to an American multi-employer pension plan (the 1974 Plan). Although no Walter Canada Group entity was a party to the pension, the 1974 Plan sought to claim this withdrawal liability from Walter Canada Group under a "long arm" statute, ERISA.

ERISA's "controlled group liability" provisions provide that a pension plan facing unfulfilled withdrawal liabilities from one corporate entity may demand payment from any other entity within the same corporate group, as long as certain ownership thresholds are met. The 1974 Plan argued that Walter Canada Group was part of the same controlled group as Jim Walter Resources and was therefore responsible for its pension withdrawal liabilities.

The decision

Justice Fitzpatrick decided the issue using a choice of laws analysis. She characterized the 1974 Plan's claim as one implicating corporate legal personality and concluded that Canadian law applied to govern this claim.

According to Justice Fitzpatrick, ERISA's scheme of controlled group liability had the legal effect of dissolving the boundaries between Canadian and American corporations – ignoring the fundamental principle of separate corporate personality enshrined in Canadian law. As a result, the appropriate choice of law rule was the rule regarding corporate personalities: that the governing law was the law of the place of incorporation. Since Walter Canada Group is composed of Canadian entities, Canadian law applied.

Implications

This decision marks the first time a Canadian court has considered whether a foreign party can claim against a Canadian debtor solely pursuant to a “long arm” foreign statute. The case also explains the Court’s discretion regarding evidence and claims processes pursuant to the CCAA.

Osler was counsel to Walter Canada Group in these proceedings. Should you have any further questions regarding this decision, please contact [Marc Wasserman](#), [Mary Paterson](#), [Patrick Riesterer](#), or [Karin Sachar](#).

[1] The *Employee Retirement Income Security Act of 1974* (ERISA), Pub. L. 93-406, 88 Stat. 829, enacted September 2, 1974, codified in part at 29 USC. ch 18.