

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**In re:** )  
 ) **Case No. 15-02741-TOM7**  
**NEW WEI, INC., et al.** )  
 ) **Chapter 7**  
**Debtor(s)** )

**MOTION TO ALLOW INTERIM DISTRIBUTION**

**COMES NOW** Andre M. Toffel (the “Trustee”), duly appointed interim Chapter 7 trustee of the bankruptcy estates of the Debtors associated with this jointly administered case and as the liquidating trustee of the liquidating trust (the “Liquidating Trust”), created in connection with the October 13, 2017 settlement agreement (the “Settlement Agreement”) with Warrior Met Coal, Inc. (“Warrior Met”) and, pursuant to 11 U.S.C. 105(a), moves this Court to approve an interim distribution to holders of 11 U.S.C. § 503(b)(9) claims. In support, the Trustee states the following:

1. On October 13, 2017, the Trustee, acting in his capacity as Chapter 7 trustee of the Debtors’ estates, filed his Motion for Approval of Proposed Settlement (the “**Motion to Approve**”) which sought approval of the Settlement Agreement with Warrior Met as to certain disputed assets and claims (the “**Disputed Assets**”). (Doc. 3145).



2. The Settlement Agreement provided for the creation of the Liquidating Trust and the appointment of the Trustee as liquidating trustee, detailed the Disputed Assets as to which the Debtors' estates and Warrior Met both claimed an interest, recited an agreement between the Trustee and Warrior Met as to the disposition of the Disputed Assets, and explained that the Disputed Assets would be transferred to the Liquidating Trust for administration by the liquidating trustee. (Doc. 3145, at Exhibit A).

3. The Motion to Approve, which included a copy of the Settlement Agreement as its Exhibit A, was properly noticed, a hearing was held on November 13, 2017, and this Court entered an order (the "**Order**") granting the Motion to Approve on November 17, 2017. (Doc. 3192, at pp. 1 - 2).

4. The Settlement Agreement provides a distribution scheme as to assets in the Liquidating Trust. (Doc. 3145, at Exhibit A, at p. 10 – 11). In pertinent part, it states:

The Trustee in his role as trustee for the Liquidating Trust [] shall from time to time distribute the remaining cash assets in the Liquidating Trust with the following priority as follows:

(a) first, to pay Warrior [Met] any assets it receives that are allocated to Warrior in this Agreement or that otherwise belong to Warrior;

(b) second, (i) to pay the reasonable administrative costs, including income tax of the Liquidating Trust, if any, and expenses to the Liquidating Trust and of the Chapter 7 proceedings including the fees and expenses of all professionals thereof, including those arising from any attempt to liquidate, collect, and recover any of the assets described

herein, and (ii) to pay the Liquidating Trustee an amount equal to the compensation stated in 11 U.S.C. § 326(a) as to all distributions made by the Liquidating Trustee and without regard to whom those distributions are made, plus all necessary and reasonable expenses. ...

(c) third, to all unpaid allowed, administrative priority claims arising from the Chapter 11 proceedings.

(d) fourth, all priority claims that have a higher statutory priority than the Supplier Claims.

(e) fifth, pro rata distributions on the Supplier Claims that are allowed by the proceedings in the Bankruptcy Court.

5. “Supplier Claims” were defined in the Settlement Agreement as holders of 503(b)(9) priority claims. The Trustee is not aware of any priority claims that have a higher statutory priority than the Supplier Claims. Thus, pursuant to the order of priority referenced in the Settlement Agreement above, the next creditors to be paid will be Supplier Claims.

6. One of the last remaining larger assets of the Liquidating Trust, Cardem Insurance Co., Ltd. (“Cardem”), was recently liquidated, and the Liquidating Trust received \$900,000.00 from the liquidation.

7. The final list of approved Supplier Claims total \$2,077,635.80.

8. The Trustee proposes to pay to holders of the Suppliers Claims an interim distribution in the total amount of \$625,000.00, which will result in an amount equal to approximately 30% of their allowed claims.

9. The WEI Settlement Trust Agreement entered into by Warrior Met and the Trustee in 2017 provides as follows with respect to unclaimed distributions:

**7.2 Unclaimed Distributions.** Any Distributions to be made by the WEI Settlement Trust under the Settlement Agreement that cannot be delivered to the entity entitled thereto within 120 days after an attempted distribution (including by an entity's failure to negotiate a check issued to such entity 120 days after issuance of a check) shall become vested in, and shall be transferred to, the WEI Settlement Trust, notwithstanding state or other escheat or similar laws to the contrary. In such event, such entity's claim shall no longer be deemed to be Allowed and such entity shall be deemed to have waived its rights to such payments or distributions under the Settlement Agreement and shall have no further claim in respect of such Distribution and shall not participate in any further distributions under the Settlement Agreement with respect to such claim.

The Trustee will make a diligent effort to locate any 503(b)(9) claimants for whom a check is returned or is not negotiated within 120 days after issuance.

10. The Trustee intends to make a final distribution to the holders of the Supplier Claims after the liquidation of all remaining assets and claims in the Liquidating Trust. Such final distribution would be made directly by the Liquidating Trust.

WHEREFORE, PREMISES CONSIDERED, the Trustee requests that the Court, after adequate notice, enter an Order approving this Motion to allow interim

distribution as set forth above. The Trustee requests all other and further relief to which he may be entitled.

Dated: August 22, 2024.

/s/ Stephen B. Porterfield

Stephen B. Porterfield

Attorney for Andre M. Toffel, Trustee

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this the 22<sup>nd</sup> day of August, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing all persons and entities that have filed a request for service of filings in this case pursuant to Bankruptcy Rule 2002.

Electronic notice, and via U.S. Mail where appropriate, will also be provided to the following:

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