

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

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**In re:**

**NEW WEI, INC., et al.**

**Case No. 15-02741-TOM7  
Chapter 7**

**Debtor(s).**

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**TRUSTEE'S MOTION TO APPROVE SECOND AMENDMENT TO THE  
PREVIOUSLY APPROVED SETTLEMENT AGREEMENT WITH  
WARRIOR MET COAL**

Andre M. Toffel (the "Trustee"), in his capacity as the trustee for the Chapter 7 Debtors being jointly administered under this Case Number 15-02741-TOM 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") hereby moves this Court to approve the proposed second amendment (the "Second Amendment") to the Settlement Agreement attached here as **Exhibit A** and to authorize the Trustee to execute the Second Amendment. 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 Settlement") which sought approval of the Settlement Agreement with Warrior Met, a copy of which was attached thereto as its Exhibit A, as to certain disputed assets and claims (the "Disputed Assets"). (Doc. 3145).



2. Among other more specific items, the Settlement Agreement (1) provided for the creation of the Liquidating Trust and the appointment of the Trustee as liquidating trustee, (2) detailed the Disputed Assets as to which the Debtors' estates and Warrior Met both claimed an interest, (3) recited an agreement between the Trustee and Warrior Met as to the disposition of the Disputed Assets, and (4) 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 Settlement, was properly noticed, a hearing was held on November 13, 2017, and this Court entered an order (the "Settlement Order") granting the Motion to Approve Settlement on November 17, 2017. (Doc. 3192).

4. Approximately eighteen months thereafter, on May 31, 2019, the Trustee filed his Motion to Approve Amendment to the Previously Approved Settlement Agreement with Warrior Met Coat (the "Motion to Approve First Amendment"), which sought approval of the first amendment to the Settlement Agreement ("First Amendment"), a copy of which was attached thereto as its Exhibit A. (Doc. 3445).

5. At that time, several categories of the assets detailed in the Settlement Agreement required additional administration and actions by the Trustee and Warrior Met. Moreover, the amount and characteristics of some of the assets governed by the Settlement Agreement had changed, new assets had been found, and potential assets had been identified. Accordingly, the First Amendment modified the maximum amount the Trustee is entitled to receive (the "Cap") under the Settlement Agreement. With the exception of any funds received from the Cardem liquidation or the Coal Funds Overdraw litigation, which

are otherwise dealt with in the Settlement Agreement, the First Amendment sought to allocate to the Trustee 10% of any additional assets received in the future by the Trustee in his role as liquidating trustee as opposed to the Cap currently detailed in paragraph 12 of the Settlement Agreement. The Settlement Agreement otherwise was unaffected. (Doc. 3445, at Exhibit A).

6. The Motion to Approve First Amendment, which included a copy of the First Amendment as its Exhibit A, was properly noticed, a hearing was held on June 24, 2019, and this Court entered an order (the “First Amendment Order”) granting the Motion to Approve First Amendment on June 25, 2019. (Doc. 3470).

7. Since that time, the Settlement Agreement and the First Amendment have governed the Parties’ actions and nearly all of the Disputed Assets have been administered by the Trustee except for the following: (a) the potential tax refund being pursued by the Investment Recovery Group previously approved as a professional by this Court (“Tax Refund”); and (b) the railroad fuel surcharge case being handled by the Berger Montague law firm previously approved as a professional by this Court (“Fuel Surcharge Action”).

8. The Parties have also contemplated the treatment of any remaining assets, as the Trustee has determined that beyond the Tax Refund, the Fuel Surcharge Action and all interests in real property, if any, and any future or unknown Disputed Assets there might exist property of these estates, consisting of unknown assets or claims, which have not been previously sold, assigned or transferred (collectively “Remnant Assets”).

9. Due to the fact that Warrior Met has permitted the Trustee to retain funds beyond those to which is its entitled under the Settlement Agreement and more specifically the First Amendment, the Parties have agreed that Warrior Met should be entitled to receive all Remnant Assets, except for the Tax Refund, the Fuel Surcharge Action and all interests in real property, if any.

10. Therefore, the Second Amendment modifies paragraph 11 of the Settlement Agreement to permit the Trustee to continue the liquidation of the Tax Refund, the Fuel Surcharge Action and any interests in real property, the proceeds of which shall remain subject to the Settlement Agreement and First Amendment, as applicable, but transfers all other Remnant Assets to Warrior Met and contemplates the Trustee's consent to a subsequent transfer and conveyance of the Remnant Assets by Warrior Met to its designee/assignee, will facilitate the full and final administration of the remaining assets and further effectuate the purpose and spirit of the Parties' negotiated resolution of the Disputed Assets.

11. In accordance, the proposed Second Amendment inures to the benefit of the beneficiaries of the Liquidating Trust, and no party in interest will be prejudiced by this Court's approval of the Second Amendment.

**THEREFORE**, the Trustee hereby asks this Court to enter an Order (1) approving the Second Amendment attached here as Exhibit A; and (2) authorizing the Trustee to execute the Second Amendment in his capacity as Chapter 7 Trustee to the Debtors' estates and as

liquidating trustee, as well as to consent to Warrior Met's subsequent transfer and conveyance of the Remnant Assets to its designee/assignee.

**Respectfully submitted this 26<sup>th</sup> day of November, 2024.**

/s/ Stephen B. Porterfield  
Stephen B. Porterfield  
**Counsel for Andre M. Toffel**

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 26, 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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/s/ Stephen B. Porterfield  
OF COUNSEL

## **SECOND AMENDMENT TO OCTOBER 13, 2017 SETTLEMENT AGREEMENT**

This Second Amendment (the “Second Amendment”) to the October 13, 2017 settlement agreement (the “Settlement Agreement”),<sup>1</sup> as amended by that Amendment to October 13, 2017 Settlement Agreement (“First Amendment”), is made and entered into this \_\_\_\_ day of November, 2024, by and between Andre M. Toffel (the “Trustee”), in his capacity as the trustee for the Chapter 7 Debtors being jointly administered under Northern District of Alabama Bankruptcy Case Number 15- 02741-TOM (the “Bankruptcy Case”) and as the liquidating trustee of the liquidating trust (the “Liquidating Trust”) created in connection with the Settlement Agreement, and Warrior Met Coal, Inc. (as successor to Coal Acquisition, LLC) (“Warrior Met” and with the Trustee, collectively, the “Parties”). The Parties agree and mutually desire to enter into this Amendment to the Settlement Agreement.

### **RECITALS**

**WHEREAS**, on or about July 15, 2015, Walter Energy, Inc. and many of its subsidiaries, (collectively, all the debtor entities that filed Chapter 11 bankruptcies are referred to herein as “Walter Energy”) filed Chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the Northern District of Alabama, Southern Division (the “Bankruptcy Court”), which cases were consolidated for administrative purposes; and

**WHEREAS**, Walter Energy’s bankruptcy filings created bankruptcy estates (collectively, the “WEI Estates”); and

**WHEREAS**, on January 8, 2016, the Bankruptcy Court granted Walter Energy’s section 363 motion to sell substantially all of its real and personal property assets in multiple lots through a public auction process (Bankruptcy Case, Doc. 1584); and

**WHEREAS**, Warrior Met acquired certain assets pursuant to an Amended and Restated Asset Purchase Agreement dated March 31, 2016 (Bankruptcy Case, Doc. 2235) (the “Acquired Assets”); and

**WHEREAS**, the WEI Estates were converted to Chapter 7 on or about February 21, 2017 (the “Conversion Date”); and

**WHEREAS**, the Trustee was duly appointed Chapter 7 trustee for all of the WEI Estates on or about the Conversion Date; and

**WHEREAS**, a dispute (the “Dispute”) arose between the Trustee and Warrior Met as to the ownership and rights as to the Acquired Assets; and

**WHEREAS**, the Trustee and Warrior Met entered into negotiations as to the Dispute and ultimately elected to resolve the Dispute;

**WHEREAS**, the Settlement Agreement was drafted and embodies the Parties’ negotiated resolution of the Dispute; and

**WHEREAS**, the Parties sought approval of the Settlement Agreement from the Bankruptcy Court on October 13, 2017 via the Chapter 7 Trustee’s Motion for Approval of Proposed Settlement

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<sup>1</sup> Any capitalized terms undefined herein shall have the meanings ascribed to them in the Settlement Agreement.



(Bankruptcy Case, Doc. 3145); and

**WHEREAS**, on November 17, 2017, after proper notice and hearing, the Bankruptcy Court entered an order (the “Settlement Order”) approving the Settlement Agreement (Bankruptcy Case, Doc. 3192); and

**WHEREAS**, approximately eighteen months thereafter, the Parties understood that several categories of the assets detailed in the Settlement Agreement required additional administration and actions by the Trustee and Warrior Met; and

**WHEREAS**, the amount and characteristics of some of the assets governed by the Settlement Agreement had changed, new assets had been found, and potential assets had been identified; and

**WHEREAS**, in order to address the changing needs of the Parties, the Parties sought to amend the Settlement Agreement by modifying the maximum amount the Trustee is entitled to receive (the “Cap”) under the Settlement Agreement (“First Amendment”); and

**WHEREAS**, the Parties sought approval of the First Amendment to the Settlement Agreement from the Bankruptcy Court on May 31, 2019 via the Chapter 7 Trustee’s Motion to Approve Amendment to the Previously Approved Settlement Agreement with Warrior Met Coat (Bankruptcy Case, Doc. 3445); and

**WHEREAS**, on June 25, 2019, after proper notice and hearing, the Bankruptcy Court entered an order and the Court entered an order (“First Amendment Order”) approving the First Amendment (Bankruptcy Case, Doc. 3470); and

**WHEREAS**, since that time, the Settlement Agreement and the First Amendment have governed the Parties’ actions and nearly all of the Disputed Assets have been administered by the Trustee except for the following: (a) the potential tax refund being pursued by the Investment Recovery Group previously approved as a professional by this Court (“Tax Refund”); (b) the railroad fuel surcharge case being handled by the Berger Montague law firm previously approved as a professional by this Court (“Fuel Surcharge Action”), and (c) all interests in real property, if any; and

**WHEREAS**, the Parties acknowledge that that Warrior Met has permitted the Trustee to retain funds beyond those to which is its entitled under the Settlement Agreement and more specifically the revised Cap under the First Amendment; and

**WHEREAS**, the Parties also acknowledge that neither the Settlement Agreement nor the First Amendment adequately address the treatment of any remaining assets of the Liquidating Trust or the WEI Estates, as the Trustee has determined that beyond the Tax Refund and the Fuel Surcharge Action, which are the only two known remaining Disputed Assets, future Other Assets (as described in the Settlement Agreement) of nominal or inconsequential value may continue to arise and there might exist property of the WEI Estates, consisting of unknown assets or claims, which have not been previously sold, assigned or transferred (collectively “Remnant Assets”); and

**WHEREAS**, to facilitate final administration of the remaining assets and to further effectuate the purposes and spirit of the Parties’ negotiated resolution of the Dispute, the Parties wish to amend the Settlement Agreement as detailed in this Second Amendment; and

**WHEREAS**, the Parties recognize the necessity of obtaining the Bankruptcy Court’s approval of this Amendment, and without such approval, this Amendment is null and void.

**NOW, THEREFORE**, subject to Bankruptcy Court approval, it is hereby agreed as follows:

**AGREEMENT**

This Second Amendment is entered into because the Trustee and Warrior Met each conclude that it is in the best interest of the Parties to amend the Settlement Agreement as set forth herein. In consideration of the recitals and covenants contained in this Second Amendment, as well as those detailed in the Settlement Agreement, and for other good and valuable consideration, the Parties agree as follows:

1. **Confirmation of Recitals.** The Parties acknowledge and agree that the Recitals detailed above are true and correct to the best of their respective understanding and belief.
2. **The Amendment.** Paragraph 11 of the Settlement Agreement is hereby amended to include the following language at the conclusion of the paragraph:

Notwithstanding the foregoing, in order to ensure the full and final administration of the remaining assets of the Liquidating Trust and the WEI Estates, upon mutual agreement of the Parties without further approval of the Bankruptcy Court, the Trustee, in his capacity as Chapter 7 trustee of the WEI Estates and Liquidating Trustee of the Liquidating Trust, shall assign, transfer and convey to Warrior Met, except for (a) the tax refund being pursued by the Investment Recovery Group previously approved as a professional by the Bankruptcy Court ("Tax Refund"), (b) the railroad fuel surcharge case being handled by the Berger Montague law firm previously approved as a professional by the Bankruptcy Court ("Fuel Surcharge Action"), and (c) all interests in real property, if any, all right, title and interest under, in and to any Other Assets, including, but not limited to, any future or unknown Disputed Assets and any other property of the WEI Estates, consisting of unknown assets or claims, which have not been previously sold, assigned or transferred (collectively "Remnant Assets"). For the avoidance of doubt the allocation of the proceeds from the Tax Refund and the Fuel Surcharge Action shall be subject to the terms of the Settlement Agreement and the First Amendment, as applicable. Further, the Trustee shall consent to Warrior Met's subsequent transfer and conveyance of the Remnant Assets to any designee/assignee.

3. **Settlement Agreement and First Amendment otherwise unchanged.** Except as expressly detailed here, the terms of the Settlement Agreement, as modified by the Settlement Order and the First Amendment, remain unchanged. Those terms, in their entirety, are expressly ratified and reaffirmed by the Parties and, to the extent necessary, are incorporated here by reference.

**KNOWINGLY AND VOLUNTARILY EXECUTED THIS \_\_\_\_ OF NOVEMBER, 2024 WITH THE INTENT TO BE BOUND BY THE TERMS DETAILED ABOVE:**

**TRUSTEE:**

\_\_\_\_\_  
ANDRE' M. TOFFEL

**WARRIOR MET COAL, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_