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

In the Matters of:	
NEW WEI INC., et al.,	Case No. 15-02741-TOM
Debtors.	
HILLSBOROUGH HOLDINGS CORP.,	Adv. Proc. 15-00127-TOM
Plaintiff,	
v.	
UNITED STATES OF AMERICA,	
Defendant.	

TRANSCRIPT OF HEARING ON:
IN LEAD CASE NO. 15-02741-TOM:
[#3530] APPLICATION FOR INTERIM COMPENSATION IN THE AMOUNT OF $150,000.00 AND REIMBURSEMENT OF EXPENSES IN THE AMOUNT OF $0.00, FILED BY ANDRE' M. TOFFEL, TRUSTEE;
[#3523] AMENDED APPLICATION FOR FINAL COMPENSATION IN THE AMOUNT OF $133,158.15 AND REIMBURSEMENT OF EXPENSES IN THE AMOUNT OF $2,847.38, FILED BY BRADLEY ARANT BOULT CUMMINGS LLP, ATTORNEYS FOR TRUSTEE;
[#3539] OBJECTION OF PETER SPULER, JR. TO AMENDED FIFTH AND FINAL APPLICATION FOR COMPENSATION, FILED BY BRADLEY ARANT BOULT CUMMINGS LLP;
[#3559] TRUSTEE'S RESPONSE TO OBJECTION OF PETER SPULER, JR.;
[#3554] MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BETWEEN THE CHAPTER 7 TRUSTEE AND THE UNITED STATES OF AMERICA;
[#3563] OBJECTION OF WARRIOR MET COAL, INC. TO MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BETWEEN THE CHAPTER 7 TRUSTEE AND THE UNITED STATES OF AMERICA

IN ADV. PROC. NO. 15-00127-TOM:
MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BETWEEN THE CHAPTER 7 TRUSTEE AND THE UNITED STATES OF AMERICA [#207]
BEFORE THE HONORABLE TAMARA O. MITCHELL
MONDAY, NOVEMBER 18, 2019; 11:04 A.M.
BIRMINGHAM, ALABAMA

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P R O C E E D I N G S

THE COURT: (Audio begins mid-sentence) -- that has been transferred to this district, and the Walter Energy main case. If I could get appearances of the lawyers who are present in the courtroom, first, please.

MR. PORTERFELD: Stephen Porterfeld for the trustee. And the trustee's also here, as well as the trustee's accountant, Mr. Denaburg.

THE COURT: Okay.

MR. BAILEY: Your Honor, James Bailey, special counsel to the trustee. I'm only here on the fee app -- or the --

THE COURT: Okay.

MR. WILLIAMS: Your Honor, Scott Williams of the Rumberger Kirk firm, here on behalf of Mueller Water. With me today is Mark Maloney of the King & Spalding firm, also making an appearance.

THE COURT: Thank you.

MR. RETHERFORD: Good morning, Your Honor. Jeremy Retherford here for Ditech Holdings (sic).

MS. MURPHY: Good morning, Your Honor. Lynne Murphy appearing on behalf of the United States.

THE COURT: Thank you, Ms. Murphy.

MR. HALL: Michael Hall on behalf of Warrior Met Coal. Along with me is Jonathan Hollingshead, a tax accountant at Warrior Met.

THE COURT: Any other counsel that are present in the courtroom?

For those of you on the phone, we will just use the CourtCall list as the appearance list.

So, Mr. Porterfield, I have seen the motion. Do you want to take up some of these other matters that are set in the main case, first --

MR. PORTERFELD: I think it would be better. And --

THE COURT: Okay, so we'll --

MR. PORTERFELD: -- Mr. Bailey could leave.

THE COURT: We'll first take up the application for interim compensation of the trustee.

Mr. Dudeck, BA have a position?

MR. PORTERFELD: Think he left, Your Honor.

THE COURT: Oh, he left. I guess he didn't.

Any objections from anybody in the courtroom, on the trustee's interim application?

Any objections from any counsel that are present on the phone, as to the trustee's interim application?

All right, Mr. Toffel, I'll approve that interim application, then. If you'll send that proposed order.

MR. TOFFEL: I will. Thank you, Your Honor.

THE COURT: Also, Mr. Bailey, you're here as special counsel on an application for compensation on behalf of the Bradley firm.

MR. BAILEY: That's correct, Your Honor.

THE COURT: And the fee examiner apparently had no issues and recommended the fees and expenses as requested on this fifth interim as well as the final; correct?

MR. BAILEY: That's correct, Your Honor.

THE COURT: Any objections from any counsel that are present in the courtroom?

Any objections from any counsel that are on the phone?

Mr. Shuler -- Spuler -- sorry -- are you on the phone?

MR. SPULER: Yes, I am, Your Honor.

THE COURT: Mr. Spuler, I have read your objection as well as the response filed by the counsel for the trustee. I understand that you are upset that you're not getting paid and that lawyers are getting paid and other things are getting paid. I can assure you that in this case you are not the first to voice that concern. I will share with you comments I have made in other hearings to other individuals who feel similarly left out and left in the cold and treated poorly: that this case has -- it's a very large case; it was about coalmines. And honestly, one of the main goals in the case early on was to keep the mines open and operating and keep the miners working, as well as allowing numerous businesses in the community and in the vicinity of the mines continuing to operate without their own bankruptcy as a result of these mines closing. We accomplished that. Part of the price of that was that a lot of

retired miners perhaps have lost some benefits. There have been some widows and other people that were family members of deceased miners who may have suffered as a result. And certainly lots and lots and lots of creditors like yourself who have what we call a general unsecured claim will likely go unpaid. There's nothing I can do about that. The Bankruptcy Code has a certain priority of how things get paid. And I am stuck with that. It's what we deal with every day. I know it's new to you. Unfortunately, there's nothing I can do to change that. And it won't make you feel any better that you're in good company with probably hundreds of thousands of other creditors who have claims that will likely go unpaid.

That's all I can really tell you at this point. But there's nothing I can do to help you.

MR. SPULER: May I make a brief statement, Your Honor?

THE COURT: Yes, sir. I will give you a few minutes, but --

MR. SPULER: Yes.

THE COURT: -- I won't give you much more than that.

MR. SPULER: I will try to speak quickly. I am a -- worked in the energy field all my life. I'm seventy-five years old. I've taken off from work to be on this conference call. I have worked in hard-rock mining and I have worked in surface mining most of my life, out in Wyoming, in Black Thunder Mine. So I appreciate the hardship for these miners; my heart is with

them.

In this case, I took 40,000 dollars of hard money, and I didn't feel that I was day trading or speculating; I was lending money to the company in 2013. So my heart is with the miners. And it's painful for me, as I'm sure you can appreciate, when I continue to get notices from the court, showing thousands of dollars, and even millions of dollars, that are handed to people who have shiny shoes. I happen to be sitting here away from work. I'm working out at Andrews Air Force Base on construction. I'm seventy-five years old. I'm in poor health because of mining. And I see that the Court, you personally, Your Honor, have awarded two-and-a-half million dollars in the last five months to people who do not have, like myself, scars on their face and dirt under their nails and are working with steel-toed shoes. Many of them don't even know what steel-toed shoes are.

So it's painful for me. That's the end of my statement, Your Honor.

THE COURT: Thank you, Mr. Spuler. I think you did a nice job of trying to convey your disappointment and concerns.

Any response from the trustee, Mr. Porterfield (sic)?

MR. PORTERFELD: No, ma'am.

THE COURT: Mr. Spuler, I am sympathetic. And I hate it. One of the things that has been most painful for all of us in this case, it's a number of small investors, small vendors,

people who perhaps hauled coal for this company; a lot of little people that have suffered. But again, the one accomplishment that we all are comfortable with is that we have managed to keep the mines open. If you're in the business a long time, then you're fully aware that, over the last five or six years, virtually every large mining company in the United States has filed a bankruptcy case; this is not the first one. And likely -- and obviously, has not been the last once, since Murray has recently filed, and they're even larger than Walter Energy.

I'm sorry for your loss but, again, I have to abide by the laws, and they are what they are. And I know it is extremely disconcerting to you to see the amount of money paid to professionals but, again, that's what the Bankruptcy Code provides is that professionals and others who work on these cases -- in the priority of payment, they come ahead of unsecured creditors. And all I can tell you is, those are the laws; if you're not happy with them, you need to contact your senator or your congressman and let them know that you think the laws perhaps should be changed.

I thank you very much for your participation and your correspondence in the case. I'm going to over --

MR. SPULER: A quick clarification, Your Honor --

THE COURT: Yes.

MR. PORTERFELD: -- is you mentioned "unsecured". I'm

the -- I was the holder of senior notes. I didn't think they were unsecured. I thought they were senior notes. Can you please educate me on that, Your Honor?

THE COURT: I'm assuming that, if the trustee had determined that they were in fact secured by anything, that your class of claim would have been treated or classified differently. But the trustee would have reviewed those claims and determined whether or not -- the fact that you are senior or junior is really not the determination; it is whether or not you had any collateral. And I'm assuming the trustee has determined that there was nothing attached to the claim to show that you had any collateral.

MR. PORTERFELD: That's correct, Your Honor.

MR. SPULER: Thank you for your time, Your Honor. God bless America. God bless Alabama.

THE COURT: Thank you, Mr. Spuler.

I'm going to overrule the objection. Mr. Porterfield (sic), if you will send --

MR. PORTERFELD: I'll do both those orders --

THE COURT: All right.

MR. PORTERFELD: -- Your Honor; just put the --

THE COURT: You're going to do that one, or is Mr. Bailey going to do it?

MR. BAILEY: I can send my order --

THE COURT: Okay.

MR. BAILEY: -- Your Honor. It's fine.
THE COURT: Well, if you're going to send your --
MR. BAILEY: I don't know if the --
THE COURT: -- order, then in your order just indicate that -- based on the response and the arguments in court today, that the objection of Mr. Spuler's overruled.
MR. PORTERFELD: I think he had an --
MR. BAILEY: Thank you, Your Honor.
MR. PORTERFELD: -- objection to the trustee's as well, Your Honor.
THE COURT: Then in --
MR. PORTERFELD: We'll include that one as well.
MR. BAILEY: I'll do --
THE COURT: Each of you --
MR. BAILEY: I'll do mine, Your Honor.
THE COURT: Yes, y'all handle it.
MR. BAILEY: Yeah. Thank you, Your Honor.
THE COURT: I think that's the only thing that's left now, except for the motion to approve the compromise.
And you can just stay in the main case if you want to, Jen (ph.).
THE CLERK: I'm actually in the AP.
THE COURT: Huh?
THE CLERK: I'm actually in the AP.
THE COURT: Was all of it in the AP? That's fine.

THE CLERK: That's fine?

THE COURT: That's no problem.

Okay. So with respect to the remaining matter, which is the motion to approve the settlement, who wants to tell me where we are? As you all don't rush to the podium.

MR. PORTERFELD: I'll --

THE COURT: Ms. Murphy, I think perhaps --

MR. PORTERFELD: -- defer to Ms. Murphy.

THE COURT: -- your involvement -- maybe longevity elects you to the podium.

MS. MURPHY: I don't know about that, Your Honor.

Right now it appears that the motion to approve settlement has been filed. Warrior Met has filed what I would consider a conditional objection, and we met earlier this morning to see if we could attempt to resolve it. I understand --

And if I'm incorrect, Mr. Hall, please say something.

But I understand that they need a little bit more time for KPMG to go through the documents. And then they think that they could set a meeting up between Mueller Water's accountants and KPMG, to try to reconcile any differences that they see.

The United States' position and Mueller Water's position is that we don't think that there's a problem. And we would like to proceed forward with the Court today to have our arguments so that the Court can make some type of decision on

what it thinks is appropriate to do in the circumstances. But we believe that the Court can approve the settlement today.

THE COURT: Thank you, Ms. Murphy.

Mr. Hall?

MR. HALL: Think that's a fairly accurate statement of our position. Don't know if I should start arguing on continuance now or not.

So, obviously we are aware of this thirty-five-year dispute. When it was announced there would be a settlement, we said we thought we needed to see it, just because we were concerned on how it might impact Warrior Met. Warrior Met, of course, bought substantial assets from Walter Energy. Included in those assets were certainly over a billion dollars' worth of net operating losses, which obviously aren't worth a billion dollars but they're worth a heck of a lot of money. And in fact, there's probably more than two billion dollars. And there're other tax attributes as well.

I'm informed by the other side and, I think, can say this: that this is not really, in one sense, a compromise -- they would say -- they would say it's a settlement -- but that they really are just taking the accurate tax numbers and moving them forward to reach this result. And if that were the case -- and it may be the case -- that's one thing. But if all we're -- if all they're doing is saying, these are the accurate numbers, well, we're willing to live with the accurate numbers

if they're accurate. But if it turns out they're not accurate, they say, under this settlement, that the settlement would of course control. And I understand that.

I think we're going to find we're okay with this; I do. But we were given the backup tax documents -- now, we got tax attorneys and things like that, but on Tuesday of last week we got 447 pages. And our outside tax accountants say there are some inconsistencies that they don't understand but they think they could be made to understand.

Now, Mr. Hollingshead is here, is head of the chief tax accountant for Warrior Met, but he is not -- this is not his area of expertise. When the NOLs were put together, that was done by KPMG. And it's the same KPMG people that we have engaged to try to resolve this. And we got the proposed settlement -- I don't know but, at this point, less than three weeks ago, I'm pretty sure; on a Saturday. Maybe it's three weeks and two days. And we've been diligent.

I admit that Mr. Maloney called and left me a voicemail Friday afternoon that I just missed, trying to see if we could have a call over the weekend. I'd say that's the only mistake I've made in this case; I've made plenty more elsewhere -- or at least on this matter. But that's our problem. Our problem is that they say, the settlement will be binding on us and, if it is, we need a little bit of time to know if we're going to lose any of our NOLs. They say, we're

probably getting more NOLs. We're not disputing that. But we don't know. We need --

THE COURT: How much time do you think it's going to take you to figure this out?

MR. HALL: Well, I'm told that if we could have a meeting with KPMG and whoever the appropriate tax people are -- and let me say this: the people have been responsive, I'm not being critical of that -- with that -- if we could get that meeting tomorrow, for example, a little bit of follow-up might well solve it, or we would have much more specific objections. I don't think it's going to take long at all. And by "specific objections", I mean things that would into merits, which I anticipate we won't have. But I don't know. I mean, a billion in NOLs requires some due diligence. And we've had six days with the numbers.

THE COURT: Mr. Maloney?

MR. MALONEY: If I may, Your Honor. And I really have two parts to this, and the first is to just lay down sort of the core principle. And I actually -- there's a couple of declarations attached to the motion; I have copies of those. We can mark those as a matter of record. There's two declarations and two documents that technically need authentication. I'm happy to make that a matter of the evidentiary record. I don't -- without objection. Or we can put people on the stand; whatever you need. I wasn't

anticipating any of this, needless to say. But I want to put a pin in that, and we can come back to it.

But addressing Warrior Met's issue from Mueller's perspective -- and pardon me if I take a couple of minutes here -- Mueller needs this resolved, Your Honor. We have been through the wringer. And I want to make a note. We haven't been through the wringer in terms of having this back-and-forth with the IRS over this issue or that issue. That has not been Mueller's role. We are an observer as it relates to the tax process. The tax process is a function of the company, the Debtor Walter Energy's historical tax position over the last thirty years, and whatever it is the IRS wants to do with that. We've been observing that, but we have been the catalyst to try to push that along, because, candidly, with the belief that we've got liability for whatever that number is, we wanted to get it resolved. And that's what we've been doing.

I want to make sure that the Court is level-set on something. The idea of a global resolution of all these tax years from '83 to -- the settlement says 2017, but it's really, I guess, through 2015, because I don't think there were any taxes owed in 2015, '16, '17; it was all -- it was all net the losses. And incidentally, I think nobody's disputing that 4.5 billion of NOLs in 2015 and another 200 million in 2016 certainly have nothing to do with this settlement, because it all relates to prior years. But this has been going on, and

it's been the stated intention to do exactly what has been done for the longest time.

I would note, Your Honor, that the debtor has made this a matter of its public SEC disclosures; candidly, SEC disclosures that my client was monitoring and was relying on. I have copies if the Court would like to look at them. But the last 10-Q that they filed, which was on November 5th, 2015, which, interestingly enough, is the same day as the sale motion and the APA was filed with the Court, Walter Energy said, we're going to, as part of the Chapter 15 -- the Chapter 11 case -- or as part of the 2015 bankruptcy case, is the way they said it -- and again, I've got this and the Court can look at it -- we're going to do a global, comprehensive -- we want to do a global, comprehensive resolution of all our income-tax liability, including the adversary proceeding that had been pending in Florida.

So, I mean, that's a matter of SEC public disclosure. And what's more, and this is very important because it was critically important and comforting to my client, they disclose in there that they thought that you'd put all this together -- and it's about a thirty-three-million-dollar problem. As you'll recall, I reported in February that the actual number as of, I think, January or -- January of 2015, was 3.74 million dollars. So those numbers are similar not by coincidence. Okay?

So I'm making the point only that this is happening just the way everybody thought it would, assuming you could get the parties together; really, the IRS and the DOJ. Those were really the two parties that needed to get together on this, more than anybody. And that has happened, and it has produced a result that is the product of their normal tax assessment of what the debtors' tax positions were all these years.

We have filed multiple status reports, the trustee's filed multiple status reports, indicating exactly the process that we were following with these netting of good years against bad years. That's been disclosed. And in February of this year, we disclosed the number.

So I want to be clear on this. The only thing that prevented us from moving more quickly then was the Ditech bankruptcy, and we had to work through all of that. But the number has been disclosed since February of this year. And the first time I've heard anything from anybody that they need to look at anything was when Mr. Hall stood up and said, well, we might -- we want to make sure that the NOL issues are taken care of. And Ms. Murphy put something in the agreement, which is Exhibit C to the motion, that tries to make this as NOL-neutral as we can. But there we are.

But the point I want to make is that at no point during all of this procedure did we get any request from anybody who thought they had an interest in the computations or

anything, until now. Now, yes, it's my understanding that this Form 870, which is the 400 pages of computation, was first delivered to Mr. Hall last week on Tuesday. That's not a document that we're in a position to provide to anybody. If anybody asked us for it, though, we would have sought permission either from the IRS or the trustee or whomever. And I'm sure we could have got it to them much sooner. But that didn't happen, notwithstanding that the fact of the settlement in principle was known and the number was known.

And again, the number, not dissimilar from what the company was reporting -- and in fact, you could argue that the difference is just accumulation of interest. But the point is, these are facts that were pretty baked-in and have been known for a long time, and it is just concerning to me that we're going to have a holdup. And I'm concerned simply that they want a level of certainty that no one's ever going to be able to give them, unless we want to just have the IRS show up and do an audit of everything. And I don't think anybody wants that.

THE COURT: Which paragraph of Exhibit C are you referencing when you said Ms. Murphy added a --

MS. MURPHY: It's paragraph 9.

MR. HALL: Paragraph 9 to Exhibit C, Your Honor. And that's in the offer letter that was then accepted by the government.

THE COURT: Okay.

MR. HALL: So my point is simply this: We've been through so many twists and turns in this case. What we've been attempting to do has been absolutely known since at least November of 2017 when there was a -- there was actually a motion before the Court, involving a settlement between the trustee and Warrior Met. Ms. Murphy objected and said, wait a minute, I don't want anything to happen that prevents us from having a party that can settle this thing. And the Court entered an order and said, nope, the Chapter 17 -- the Chapter 7 trustee's got this. And we were the catalyst.

We don't have the authority to do anything, Judge. We just -- we're sort of a casual observer because -- not a casual observer; a very interested observer. But none of these tax positions are our positions. We never said this ought to be that, or that ought to be this. We just wanted to make sure that the process stayed on track and was being done appropriately.

And these calculations were the IRS's calculations. Wanting to get together me or my tax partner, who's on the phone, incidentally, or anybody else -- all we can do is say, hey, this looks like it was done appropriately; I mean, this is the way -- this is really the IRS and the DOJ getting together and taking the data that was generated by the company, and doing what it does. And it produced a result that we were

pleased with and, frankly, is consistent with the company's prior positions.

And we just don't think it's appropriate to hold this up any longer. We'd ask the Court to enter this -- to enter this order. I think holding this up just on the -- well, we actually think -- he's telling us, we actually think we're okay. We just don't know. Well, I don't know -- I don't know where that goes.

And I just want to make a few more points, Judge. First, sort of a fundamental point, Warrior Met purchased the assets under a Section 363 sale, with a credit bid. I suppose he's got an answer for this, and I know that he wouldn't be saying this unless he felt like it was all locked up. But I didn't find anything, in the sale order or in the APA itself, that explains specifically how this was a transaction where tax attributes went back. I don't know how that works. I'm not a tax attorney, and I'm told that there are ways to do these sorts of things, but I'm not seeing any evidence in this APA that those things occurred here. But that's their position; I'm not trying to challenge it. I'm just saying that, as a preliminary matter, that's point one, the very fundamental point I don't understand.

The second point is, when I go look at that APA -- and just for the record, it's Docket 2235, which is the final APA that they filed when they closed -- what they bought, if they

got anything, per my first point -- but if they bought anything, it said, any tax assets or attributes -- neither is defined, and there's nothing in the APA that quantifies it or specifies it, et cetera -- any tax assets or attributes that carry over to buyer. Well, what the buyer gets is what's left over after the seller's already stated tax positions are dealt with by the IRS.

And so one response I have to this, Your Honor, is the number is what it is. And that's what they bought. But they didn't buy anything different than that. Certainly there's nothing in the APA to suggest that level of specificity. So at the end of the day, I think they ought to be very interested in this settlement because, now that we're done, now they actually know exactly what they got, because what they got before was sort of amorphous and contingent and it would be what it would be. We certainly know that nobody touched the 4-1/2 billion dollars of NOLs in 2015 or the 200 million in 2016. So we know they got that. But they say that there's one to two billion dollars that somehow might be impacted here. I don't get it.

But that's my second point. What they bought is whatever it is they get when this process is over. But having not gotten in the mix with this, because we've been doing this for two years, and the fact of the settlement and the number has been known since February, it's -- I've just got a very upset client, Your Honor, knowing that we have the IRS here,

and the feeling is this is teetering on the rim and it might fall in the bucket or might fall off and hit the ground. And we don't know where that's headed.

I emphasize again, the settlement calculation was computed by the IRS. They want to talk to us. I don't know where that gets us. I can't give them the level of guarantee that they're looking for. Warrior Met has the calculations; they're just as capable as anybody else. And look, I'm sympathetic, to a point, that 400 pages were given to them on last Tuesday, but in this world -- and I know you are quite familiar with it, Judge -- we move quickly and things move quickly, and it's not unusual to have to digest 400 pages in a business week.

But at the end of the day, it is what it is. Nobody's trying to disadvantage them. We're only trying to resolve the debtors' own business, and my client had to pay for it. So that's why we were interested, but we didn't have a -- we didn't have an ability to get in, mix this up. Only thing we had the ability to do was observe and say, okay, looks good. And so that's what -- that's our role. I don't know how we can help beyond paying for it, which we're willing to do. And bear in mind, Ditech's willing to pay for it, too. And that was its own episode that we played out over the last several months, and we did it successfully. And we're all here and we're all ready to go, and I don't know what happens if this goes into a

carryover of more hand-wringing.

One final point. Mr. Denaburg was keeping an eye on this and what the estate should be allowed to retain as opposed to go into the mix of the settlement. And I know that because, as is set forth in the agreement, there was a 48,000, roughly, tax credit that was used, from 2015. It was in the settlement computations, at the tail end. And he raised his hand and said, we can't do that, we got to pull that out. And so we did. We kept it in the calculations for convenience, but we are -- Warrior Met is going to refund that to the estate, 48,000 dollars plus interest. And interest continues to run and it's --

THE COURT: This is the fifty-some-odd-thousand-dollar figure?

MR. HALL: Fifty-thousand-dollar right now. The bigger interest that's running is on everything else, which is, I think, over 100,000 dollars each month. Gets bigger and bigger and bigger. We started this at 37.4 in January, and we're at 39-and-change now.

So my point in saying that, Judge, is that it's not like everybody was just saying, okay, you guys just go do whatever you want and whatever the number is is fine with us. Mr. Denaburg looked at this. And I don't know how much or whether he's willing to explain to the Court, but I believe it's his understanding that there's no problem here and, if

anything, the NOL situation for Warrior Met's getting better. Now, I don't think he wants to sign on the dotted line and guarantee anything, but there's just no guarantees with this type of stuff. There's all this math that would have to literally be audited if we're going to get to kind of the certainty that I think they want, and that's just not present here.

So I think, Judge, given that nobody can point to any specific problem that actually exists, and given what I've already explained where this is a result that's consistent with every position that the company had already been taking -- so it's not like there's some sort of magic whiz-bang, "Oh, wow, Warrior Met must be getting disadvantaged because this is a completely different result than anybody anticipated." It's not. It's perfectly in line with what's been anticipated and what everybody's been hoping for and what has been publicly disclosed in SEC filings.

So I think we're back where we started, which is, it's good news that we can clear the decks of this and not have to litigate. It's great news that Ditech is able to make a contribution, notwithstanding they're in bankruptcy. And I think it's good news for the good of the order but not particularly for my client. But they're prepared to fund the rest.

And so I would just ask that we dispense with this and

approve it --

THE COURT: I --

MR. HALL: -- because at the end of the day, they get what they get, and that's it. Thank you, Judge.

THE COURT: Hang on one second.

Mr. Retherford, I'm assuming that you adopt and concur in all of his arguments?

MR. RETHERFORD: That's correct, Your Honor.

THE COURT: Ms. Murphy, something else?

MS. MURPHY: Yeah. The only thing I do want to clear up, I think might be helpful to everybody right now, is -- there was a statement made that there was no settlement. And if the Court would just bear with me; I would just like to go through just a time chronology quickly of the negotiations that have occurred, so that everybody understands that there is a settlement here; all right? And what I'm going to do is use the years (sic) August '83 through May '95, and I'm going to call them the DOJ years. And then I'm going to use the year --

THE COURT: Give me those years one more time.

MS. MURPHY: August '83 --

THE COURT: Okay.

MS. MURPHY: -- through May '95.

THE COURT: Okay.

MS. MURPHY: And then we have May '96 through 2017; those are going to be called the IRS years. Within the IRS

years, we have May 2000 through December of 2006 that were under examination; all right? So I may talk about the IRS-examination years.

But as you know, we had the adversary proceeding start in May of 1991, which involves the DOJ years. That adversary proceeding was transferred in 2015 to this court, with the understanding of the United States that it was going to be resolved quickly. Prior to it being transferred, Walter Energy made an offer in 2013, December 2013, and the United States -- the DOJ accepted that offer on June 8th, 2015. That offer -- that settlement was repudiated, so we never got a judgment, which is why we have pending the motion to enforce settlement in this case right now.

As I said, the adversary proceeding was transferred here, and it was represented that it was transferred here so that there would be an efficient resolution. In the meantime, while the adversary proceeding was pending and somewhere around 2010, the examination-of-the-IRS years, the -- May 2000 through the December 2006, that had the examination, and then those -- that examination was appealed to our appellate section. And during that period of time -- and I think maybe the SEC filings might be helpful to the Court, if you don't -- we have them tabbed. May I approach?

Now, for those IRS-examination years, like I said, they were at appeal. And so somewhere -- and actually in the

report here, it says March 2011. My page is 31. Let me see what the --

MR. MALONEY: Your Honor, for clarity, to the right there's three tabs which cover the three pages that I believe Ms. Murphy's going to be referring. But she can confirm for us.

MS. MURPHY: Yeah, I'm trying to look for the -- I'm trying to look for the -- my page numbers are different from the page number --

It's Note 11. Yeah, Note 11. If you look, it should be under your --

THE COURT: The first tab is number 11, "Commitments and Contingencies".

MS. MURPHY: Yeah.

THE COURT: Looks to be a description of the tax litigation.

MS. MURPHY: Yeah. Okay, because it's cut off a little bit. If you go to the -- if you go to the bottom of the page, it says the Appeals Division convened a hearing on March 8th, 2011 and heard arguments from both parties as to issues not settled or conceded for 2000-through-2008 audit period. Roughly, what they had decided at that time was -- is that they could come to an agreement with the numbers but, because there had not been any conclusion with regard to the DOJ years because they were -- there hadn't even been an offer by Walter

Energy yet, they knew that there was going to be settlement discussions undergone. And so they said, well, we have to wait until those DOJ years are decided, before we can actually come up with the final numbers. And -- but they had come up with an agreement, like a pro forma agreement, based on a settlement being reached with regard to DOJ.

Those numbers that occurred, or the numbers that we used -- because -- let's do it this way. We started to negotiate here in November of 2017. And from November 2017 and till June 2018, what we were doing was taking the -- we treated the DOJ settlement as if it was enforceable, as though the settlement had been accepted. So we used the DOJ year -- the numbers for the DOJ years, per the settlement of June 2015.

And then what ended up happening was -- is we took the appeals settlement back in March 2011 and made sure that those numbers ran -- we ran them through. But nothing changed, basically, from the adjustments that were decided in appeals for those years. There might have been a couple of minor adjustments, but there weren't major -- those numbers stuck. So that's -- in June 2018 we came to the liability. Roughly, the net deficiency that we came to was about 2.72 million dollars, without interest.

Now, that Form 870 that they've talked about, which is the 470 pages or whatever that they got, is just showing those adjustments. And then they have the schedules behind them,

showing what NOLs were utilized and what credits may have been utilized. But those numbers didn't change. When we -- so what we had was actually the numbers that were in existence way before -- even before they had their sale.

And then in June 2018, once everybody agreed, and we sent that Form 870 to the estate, to -- Mr. Denaburg got it, and we sent it to Mueller Water and Ditech's counsel. And based on -- everybody agreed with those numbers. Then what we started to do was -- is -- this is where the settlement comes in. I had had to deal with the IRS and DOJ, and I said, listen, what really has happened here is -- none of these people were involved, but what we had was -- is -- I think you could say that there could be fault on both sides prior, and what we need to try to do here is come up with the economic reality of what would have happened had everybody handled this proceeding in the normal way that it should have been handled, and it'd been efficiently litigated and resolved.

And so, therefore, I said, in the appeals -- let me go back here. In the appeals process, there was an agreement that there were some overpayments where the statute of limitations had expired. And during the appeals process, they agreed that they would offset the overpayments against the IRS years only. And I had said, in order to achieve economic reality here, what you have to do is you have to agree to take those overpayments back and bring them all the way back, starting with the DOJ

years, we'll do interest-netting, and then you'll have much more of an idea of exactly what would have been owed had you handled the cases as efficiently as you possibly could under normal circumstances.

And the IRS agreed to that. So that's what we ended up doing. So from -- roughly, I guess, from June until December -- actually, December 21st, 2018 -- we had done interest computations and we sent them again to the estate, to Eddie, to Mueller Water's counsel, and also Ditech's counsel. And everybody, as of December 21st, came up with an agreement of the 3.74 million, which in effect is really the deficiency for 2001 and 2002, plus the interest. And that number was as of January 31st, 2019.

Mr. Maloney is correct that in February -- 21st, I think we had a status conference, and we revealed that number at that time. But then we had Ditech go into bankruptcy, and so then we had to proceed to go through the bankruptcy proceeding until September 26, where we ultimately got a final agreement with regard to funding. But of course, that funding is basically depending on us getting approval of this particular settlement.

And so that -- when you look at the SEC filing --

UNIDENTIFIED SPEAKER: Third tab.

MS. MURPHY: The numbers -- I mean the printing's off.

UNIDENTIFIED SPEAKER: You looking for the thirty-

three?

MS. MURPHY: Yeah, I'm looking for the thirty-three, but --

THE COURT: It's the third tab. It references the thirty-three million dollars.

MS. MURPHY: Yeah. And when you look at -- the reason why I know that there's not that big of a difference is because, when you look at the SEC filing as of July 15, 2015, they were showing a reserve of thirty-three million. Then they said that, when they applied interest on that from July 15th to September 30th, that would accrue interest of 1.9 million and so therefore, on September 30th, before they even had their sale, that there was roughly, projected, a 34.9-million-dollar-plus interest amount.

So I don't think that you can be that far off. And also, if what they're asking for is guarantees, we can't guarantee, Your Honor. I mean, the only way could guarantee something like that would be to go do a full-blown audit for Warrior Met. And I just don't think that is necessary in order to obtain the approval of the settlement here.

And I also am asking the Court to consider approval of the settlement right now because, number one, Ditech's funding is contingent on this, and we believe that Ditech should bear some of the tax liability because they are severably (sic) obligated to do so. And interest continues to accrue. Mueller

Water's going to have to pick up that tab, and there's just no need for that. The estate is not making any payments, or whatever. And if this falls through, I don't believe we'll be able to maintain the position that we can take those overpayments back. And we're talking about 165 million dollars in overpayments that we were -- that have expired and we allowed to go back.

And so for that reason -- for the above reasons and what Mr. Maloney has said, I just really think that this -- it's time for this settlement to be approved.

THE COURT: Thank you.

Mr. Hall, my -- on the --

I'll let you go -- wait one second, Mr. Toffel.

My only question, really, for Warrior Met is who is it exactly that y'all want to meet with?

MR. HALL: Well, we want KPMG to talk to -- we don't have to get together, I mean, but to talk to the people who put this together. We have had a conversation with Lynne. I have to rely on them and say who their, quote, "tax people" are. I've heard Mr. Shashy's name as an esteemed tax lawyer that Mueller hires, and they also do (sic) PwC. But we were a little confused as to whether PwC has a current role here. That's the people that can do -- that was a better explanation than I've ever heard, by the way -- that give us comfort on the accuracy of this.

Mr. -- I've gone a little bit further than your question. Mr. Maloney says the number is what it is, that's what it was when we bought the assets. And we're fine with the number is what it is. But that's not what they're asking to do here. They're asking to, in the 870, fix the number. And I think we need -- we deserve a little bit of time to take a look at it. I mean, they've had at least months to deal with the particular settlement they're trying to do.

THE COURT: Thank you.

Mr. Toffel, you have something to add?

MR. TOFFEL: Judge, can I be excused. I've got a docket in an hour and I think --

THE COURT: Yes.

MR. TOFFEL: I'm confident Mr. Porterfield (sic) and Mr. Denaburg --

THE COURT: I'm sure he can.

MR. TOFFEL: Thank you, Your Honor.

THE COURT: Anybody else have anything else before I tell you what my plan is going to be?

Okay. Here's what we're going to do: I'm going to move forward with the motion today, and I'm going to let y'all put on whatever you deem appropriate, whether you want to reference the declarations as attached to your pleading and the Court take judicial notice of that pleading that's a matter of its file, or if you want to mark them separately and offer them

as exhibits. That's your call. Y'all are experienced lawyers. Y'all decide how you want to proceed.

What I am going to do is, if at the end of all of your presentation, which I've already read everything -- if I grant this motion, any proposed order is going to have to be revised to say that whatever parties or counsel who are part of this have to cooperate with Warrior Met to the extent they need further information, documentation, or explanation of the settlement, and that that has to occur in a timely fashion. My point being, if I approve this settlement today, Mr. Hall, I'm going to approve it but they're going to have to still meet with you and give you information. And you figure out where you go from there if I approve the settlement.

Any questions about how I plan to proceed?

MS. MURPHY: The only thing I want to say, Your Honor -- and this happened on November 12th when we met -- Warrior Met is a third party, all right? And I am bound by 6103 where I'm prohibited from giving over information with regard to third-party -- what ends up happening is that, whatever the estate has, they can consent to it; I don't have -- I don't have any problem. And that's how we got the Form 870 over to them, as if the estate actually provided the Form 870.

So I guess what I'm saying is that I would imagine the estate would have no problem providing them with any additional

information. I mean, I can't do it directly, is all I'm saying.

THE COURT: All I'm suggesting is that, if it requires a representative of the IRS talking to their KPMG people, that that occur. The estate, obviously, will provide whatever documentation Warrior Met needs. The estate and trustee and Mr. Porterfield (sic) and Mr. Hall have all worked together to accomplish a lot in this case, so I don't have any concern that they will cooperate and provide documentation. I'm more concerned that -- if there are questions or explanations that they want either from the IRS, from Mr. Maloney's tax people, or Mueller's tax people, that Mr. Hall and his folks have access to get questions answered in a timely fashion.

MS. MURPHY: That's fine, as long as it's agreed that we would run the -- we would give any information to the estate.

THE COURT: That's fine.

MS. MURPHY: The estate --

THE COURT: That's fine.

MR. PORTERFELD: Estate will cooperate, obviously, Your Honor.

THE COURT: There you go.

All right, so, Mr. Maloney, how do you want to proceed this morning as far as moving forward on your motion?

Mr. Hall, something else?

MR. HALL: Well, I have a question, but I'll make a statement that Mr. Maloney may appreciate. You can put all those things in. We are not going to object to authenticity or substance or need for a witness or anything else, because we're not trying to delay that, even though I might in some sense want to.

But my question is the ruling. Okay? So it's, like, my fourteen days for appeal start if the order's entered today?

THE COURT: Yes.

MR. HALL: And that's really my only alternative --

THE COURT: Yes.

MR. HALL: -- I guess, a motion to reconsider or --

THE COURT: Yes, those are your options if I approve the motion today.

MR. HALL: Okay. At least -- I understand.

THE COURT: So given his statement, first, Mr. Maloney, it sounds like there are no objections to the two declarations or the settlement agreement, all of which are already attached to your motion, that I will deem your prior statement as a request that this Court take judicial notice of the motion and all attachments to it. So I think those are all now part of the record, if you were.

Anything else that any of the movants, which -- I consider the movants to be Mr. Maloney on behalf of Mueller, Mr. Retherford on behalf of Ditech, Ms. Murphy on behalf of the

IRS, and Mr. Porterfield (sic) on behalf of the debtor -- have anything else you want to offer in support of your motion to approve the settlement, other than the motion itself and all the documents attached to the motion, which is Proceeding Number 207 in the AP, and whatever is the proceeding number in the main case, which is --

Mr. Callies?

THE COURTROOM DEPUTY: 3554.

THE COURT: That one. Anything else, Mr. Maloney?

MR. MALONEY: As long as those are part of the evidentiary record, Your Honor. And the only other thing that I would ask the Court, I guess: to take judicial notice of are the proofs of claim that are referenced that establish that this is an 800-million-dollar asserted liability -- again, part of the docket in this case, and a position that the government has taken with respect to their claim, as well as the underlying motion to enforce settlement, which has the full background of the complications of this tax controversy. I think -- I would only ask the Court take judicial notice of that so that the Court appreciates the complexity of these issues and the need for -- and the ability to avoid all that complexity as a result of the settlement. Beyond that, nothing further.

THE COURT: Thank you, Mr. Maloney.

MR. HALL: Your Honor, as to that, I don't have any

problem with the Court using it as argument, but I don't agree -- and the proofs of claim, I'll agree, are facts as claimed by the IRS, but I think the other stuff is more in the way of argument.

THE COURT: Now, the proofs of claim are probably not technically part of this Court's record, because they are filed with the claims agent. So they are out there but they are not, in the normal sense, a part of the claims register of the Court.

MR. MALONEY: I think I have that resolved, Your Honor. I'm reminded now that Mr. Denaburg's declaration, as the tax professional of the trustee, has put into evidence, through his declaration, his understanding of the nature of the claims that are at issue, and I think that's -- that's really the only point.

And to address Mr. Hall's point, I'm not suggesting that the arguments of Ms. Murphy in her motion for settlement be adopted as true. It is the fact of the argument that I'm asking the Court to take judicial notice of, because it is the fact of the argument that evidences the complexities that we're all trying to avoid.

THE COURT: What about this document?

MR. MALONEY: Your Honor, I'd ask that the Court take judicial notice of that. I don't think there's any basis for a dispute. It's a publicly filed document; I think it's capable

of being --

MR. HALL: No objection.

THE COURT: Well, just mark it in.

MS. MURPHY: Thank you.

THE COURT: Just make it -- we've got an exhibit -- here's an extra copy you can have back.

MR. MALONEY: I have a --

THE COURT: I think it already has an exhibit number on it.

UNIDENTIFIED SPEAKER: Yeah. Yeah.

THE COURT: Are these not identical?

MR. MALONEY: Is this Movant's -- I did not -- I did not put an exhibit number on it. So we'll just put "Movants' 1".

THE COURT: It's got -- that one's got an exhibit number.

MR. MALONEY: It's got an exhibit sticker but not a number.

THE COURT: Oh. We'll put a number on it.

MR. MALONEY: Thank you.

THE COURT: Movants' Exhibit 1.

(Declaration of Eddie Denaburg was hereby marked for identification as Movants' Exhibit 1, as of this date.)

THE COURT: Okay. Anything else, Mr. Maloney, from the movants?

MR. MALONEY: No, Your Honor. Not that I'm aware of.

THE COURT: Any further arguments, Mr. Hall, from Warrior Met in support of your objection?

MR. HALL: Think we understand the Court.

THE COURT: I'm sympathetic to Warrior Met's position, I really am, Mr. Hall. And I will say that Warrior Met has contributed and participated in this Chapter 7 in a very agreeable fashion in every respect. And it has been my perception that you've only objected when you felt absolutely necessary. And I understand the basis of your objection; however, this adversary proceeding and this dispute, other than Ms. Murphy, has gone on long before any of us were a twinkle in Walter Energy's business. And enough is enough already. This AP was, I think, originally assigned to Judge Paskay in the original Chapter 11, Hillsborough Holdings. I think it later -- I assume, went to -- I think it was Judge May. Anyway, I don't know how many judges it was assigned to in the Middle District of Florida. I know that, as soon as the Middle District of Florida got wind of the new filing here, next thing I knew, this adversary proceeding graced my door.

In any case, I am very pleased that there is an agreement, settlement, resolution, whatever you want to call it, between the IRS, the DOJ, Ditech, Mueller, the debtor, to resolve a longstanding fight that I agree with Ms. Murphy should have probably been resolved years ago but, for whatever

reason -- and we don't need to go there. It's due to be resolved. I'm going to grant the motion.

I would ask that the movants tweak the order consistent with what I have noted on the record, that the movants as well as, of course, the trustee and the trustee's counsel will participate with Warrior Met to the extent necessary, to either provide documents, information, explanation, whatever, with respect to the inquiry that they feel compelled to make with respect to this deal that I'm approving.

Anything else?

Thank y'all very much.

IN UNISON: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 12:00 p.m.)

I N D E X

EXHIBITS:	DESCRIPTION	MARK	ADMIT
Movants':			
1	Declaration of Eddie Denaburg	40	

RULINGS:	PAGE	LINE
Trustee's application for interim compensation is approved.	5	20
Objection of Mr. Spuler is overruled, and the trustee's amended final application for compensation of fees and reimbursement of expenses is granted.	10	17
Motion for approval of settlement agreement among the debtor and the movants is granted.	42	2
The movants, the trustee, and the trustee's counsel are to participate with Warrior Met to the extent necessary, to either provide documents, information, explanation, etc., with respect to the inquiry that they feel compelled to make with respect to the approved settlement.	42	3

C E R T I F I C A T I O N

I, Clara Rubin, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



_____

CLARA RUBIN

eScribers
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Date: January 28, 2020

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