

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

In re:

WALTER ENERGY, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 15-02741-TOM11

Jointly Administered

**NOTICE OF TAFT COAL SALES & ASSOCIATES, INC.'S AND WALTER
MINERALS, INC.'S MOTION FOR ORDER APPROVING
COMPROMISE AND SETTLEMENT WITH REGION 10 OF THE NLRB
PURSUANT TO FED. R. BANKR. P. 9019**

PLEASE TAKE NOTICE that on November 25, 2015, Taft Coal Sales & Associates, Inc. and Walter Minerals, Inc., two of the debtors in the above-captioned chapter 11 cases, by and through their undersigned counsel, filed the *Taft Coal Sales & Associates, Inc.'s and Walter Minerals, Inc.'s Motion for Order Approving Compromise and Settlement with Region 10 of the NLRB Pursuant to Fed. R. Bankr. P. 9019* (the "Motion").

PLEASE TAKE FURTHER NOTICE that objections or responses to the Motion, if any, must be filed with the United States Bankruptcy Court for the Northern District of Alabama, Southern Division, and served so as to be received by the

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undersigned counsel on or before **December 15, 2015 at 4 p.m. (prevailing Central Time)** (the “Objection Deadline”).²

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **December 22, 2015 at 10:00 a.m. (prevailing Central Time)** before the Honorable Tamara O. Mitchell, at the United States Bankruptcy Court for the Northern District of Alabama, Southern Division, Courtroom #3, Robert S. Vance Federal Building, 1800 Fifth Avenue North, Birmingham, Alabama 35203-2111 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS OR RESPONSES ARE RECEIVED IN ACCORDANCE WITH THE TERMS OF THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

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² All deadlines and hearing dates set forth in this notice are based upon the Court’s *Order Pursuant to 11 U.S.C. §§ 102 and 105(a) and Bankruptcy Rules 2002(m) and 9007 Implementing Certain Notice and Case Management Procedures* [Docket No. 56].

Dated: November 25, 2015
Birmingham, Alabama

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**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
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In re:

WALTER ENERGY, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 15-02741-TOM11

Jointly Administered

**TAFT COAL SALES & ASSOCIATES, INC.’S AND WALTER MINERALS,
INC.’S MOTION FOR ORDER APPROVING
COMPROMISE AND SETTLEMENT WITH REGION 10 OF THE NLRB
PURSUANT TO FED. R. BANKR. P. 9019**

Taft Coal Sales & Associates, Inc. (“Taft”) and Walter Minerals, Inc. (“WM”), two of the debtors in the above-captioned chapter 11 cases hereby move (the “Motion”), pursuant to section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for the entry of an order, substantially in the form annexed hereto as Exhibit A (the “Proposed Order”): (i) approving a compromise and settlement by and between Taft, WM, and Region 10 of the National Labor Relations Board (“Region 10,” and together with Taft and WM, the “Settlement Parties”), as evidenced by a *Compliance Agreement*

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executed on October 2, 2015 (the “Settlement Agreement”); and (ii) granting related relief. In support of this Motion, Taft and WM respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b).

2. The statutory and legal predicates for the relief requested herein are sections 105(a) and 502 of the Bankruptcy Code and Bankruptcy Rule 9019.

BACKGROUND

3. On July 15, 2015 (the “Petition Date”), Walter Energy, Inc. and its affiliated debtors and debtors-in-possession (each a “Debtor” and, collectively, the “Debtors”), including Debtors Taft and WM, filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, thereby commencing the instant cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

4. On the Petition Date, this Court entered an order consolidating these Chapter 11 Cases for procedural purposes only.

5. The Bankruptcy Administrator for the Northern District of Alabama has appointed two official committees in these Chapter 11 Cases: a statutory committee of unsecured creditors (the “UCC”); and a committee of retired employees pursuant to sections 1114(c)(2) and 1114(d) of the Bankruptcy Code (the “Section 1114 Committee”).

THE NLRB PROCEEDINGS AND REGION 10 CLAIM

6. On January 10, 2014, the National Labor Relations Board issued a Decision and Order (the “NLRB Decision”) (reported at 360 NLRB No. 19) in Case Nos. 10-CA-088599 and 10-CA-0932022 (the “NLRB Proceedings”) finding that Taft and WM violated sections 8(a)(1) and (5) of the National Labor Relations Act. The NLRB Decision further found that Taft, WM, and Walter Energy, Inc. were a single employer and jointly and severally liable for this violation.

7. The NLRB Decision was the result of administrative proceedings related to a charge brought by the United Mine Workers of America, District 20 (the “Charging Party”) concerning the June 27, 2012 layoff of 21 Taft and WM employees at the Choctaw Mine.

8. The NLRB Decision requires, among other things, that Taft and WM pay backpay amounts for the 21 terminated employees.

9. On October 2, 2014, the U.S. Court of Appeals for the Eleventh Circuit issued its judgment (unpublished, reported at 586 F. App’x 525), enforcing the NLRB Decision in full.

10. On June 30, 2015, the Regional Director for Region 10 issued a compliance specification liquidating Taft’s and WM’s backpay liability due under the NLRB Decision (the “Backpay Amount”), as enforced.

11. The NLRB Proceedings continued after the petition date in accordance with the police and regulatory power exception to the automatic stay. 11 U.S.C. § 362(b)(4); *see, e.g., NLRB v. Edward Cooper Painting, Inc.*, 804 F.2d 934, 941-42 (6th Cir. 1986) (finding that courts have generally concluded that NLRB proceedings are not

stayed due to section 362(b)(4) of the Bankruptcy Code); *In re D. M. Barber, Inc.*, 13 B.R. 962, 963 (Bankr. N.D. Tex. 1981) (finding section 362 of the Bankruptcy Code does not apply to NLRB proceedings, particularly compliance proceedings); *see also Brock v. Rusco Indus., Inc.*, 842 F.2d 270, 273 n.9 (11th Cir. 1988) (noting that the police and regulatory power exception to the automatic stay allows a governmental unit to liquidate a claim).

12. On August 10, 2015, the Regional Director issued an amended compliance specification to reflect subsequently acquired information relevant to the calculation of the Backpay Amount.

13. On August 24, 2015, Region 10 filed a Proof of Claim [Claim No. 38] (the “Region 10 Claim”) in the Chapter 11 Cases. The Region 10 Claim states a total Backpay Amount of \$1,096,181.94, asserting \$7,023.04 as an administrative expense claim, \$73,038.94 as a wages priority claim, and \$1,016,119.52 as a general unsecured claim, including interest through January 14, 2015.

14. A hearing to finalize the Backpay Amount was scheduled to begin on October 5, 2015, in Birmingham, Alabama (the “Compliance Hearing”), which was continued indefinitely to allow the parties to reach the terms of a settlement that would eliminate the need for further litigation.

THE SETTLEMENT

15. The Settlement Parties entered into the Settlement Agreement on or about October 2, 2015.

16. The Settlement Agreement consensually liquidates the Backpay Amount in the total amount of \$875,860.56 (the “Settlement Amount”). The Settlement

Agreement does not determine the priority of the Settlement Amount. However, Region 10 asserts that \$5,817.70 is allowable as an administrative expense claim under sections 503(b) and 507(a)(2) of the Bankruptcy Code, and that \$24,950.00 is allowable as a wages priority claim under section 507(a)(4) of the Bankruptcy Code. While Taft and WM neither agreed nor disagreed with Region 10's position, the Settlement Agreement provides that Taft and WM will not contest or object to the allowance or priorities of the Settlement Amount. To the extent that any portions of the Settlement Amount claimed as an administrative expense claim or a wages priority claim as set forth above are not allowed by this Court, such portions may be allowed as a general unsecured claim.

17. The Settlement Agreement is subject to approval by this Court and the Regional Director for Region 10 (the "Regional Director"). The Regional Director approved the Settlement Agreement on October 23, 2015.²

AUTHORITY FOR RELIEF REQUESTED

18. Bankruptcy Rule 9019(a) authorizes a bankruptcy court to approve a compromise and settlement of a debtor. The approval or rejection of a compromise and settlement is left to the sound discretion of the bankruptcy court. *In re Tarrant*, 349 B.R. 870, 893 (Bankr. N.D. Ala. 2006). In exercising its sound discretion, a bankruptcy court should give due regard to what is right and equitable under the particular circumstances of the case and under applicable law. *See Langes v. Green*, 282 U.S. 531, 541 (1931).

² November 9, 2015 was the Charging Party's deadline to appeal the Regional Director's approval of the Settlement Agreement to the General Counsel for the NLRB. The Charging Party did not appeal.

19. Courts have relied on, among other things, the following criteria in determining whether to approve a compromise and settlement under Bankruptcy Rule 9019:

- a. the probability of success in litigation compared to the benefits offered by settlement;
- b. the complexity of the litigation involved;
- c. the expense, inconvenience, and delay likely to result if the settlement is not approved;
- d. the stage of the proceedings, including the extent of the discovery that has been conducted;
- e. the paramount interest of the creditors and a proper deference to their reasonable views in the premises;
- f. the experience and ability of counsel who represent the debtor; and
- g. the extent to which the settlement is the product of arms length bargaining.

See In re Justice Oaks II, Ltd., 898 F.2d 1544, 1549 (11th Cir. 1990), *cert. denied*, *Wallis v. Justice Oaks, II, Ltd.*, 498 U.S. 959, 111 S.Ct. 387 (1990); *see also In re Iridium Operating, LLC*, 478 F.3d 452, 462 (2d Cir. 2007).

20. The applicable factors support the approval of the Settlement Agreement, which consensually liquidates WM and Taft's estates' liability for the Backpay Amount, the calculation of which involves complex legal and factual issues. The Settlement Agreement does so without the cost, expense, inconvenience, and delay of the Compliance Hearing, which is excepted from the automatic stay pursuant to section 362(b)(4) of the Bankruptcy Code. Moreover, the Settlement Amount reduces the total Backpay Amount by over \$220,000.00, as compared to the amount Region 10 asserts in its claim.

21. Finally, the Settlement Agreement results from arms length negotiations by the Settlement Parties' respective counsel, each of whom support the Settlement Agreement based on the issues involved in the Backpay Amount calculation.

22. Based on the foregoing, approval of the Settlement Agreement liquidating the Backpay Amount is in the best interests of Taft, WM, their estates, their creditors, and all other parties in interest.

NOTICE

23. Notice of this Motion will be provided to: (i) counsel to the agent for the Debtors' prepetition secured credit facility; (ii) counsel for the indenture trustee for each of the Debtors' outstanding bond issuances; (iii) counsel to the steering committee of first lien creditors; (iv) counsel to the UCC; (v) counsel to the Section 1114 Committee; (vi) the Bankruptcy Administrator; and (vii) all persons and entities that have filed a request for service of filings in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, no other or further notice is necessary.

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto as Exhibit A, (i) approving a compromise and settlement by and between the Settlement Parties, as evidenced by the Settlement Agreement; and (ii) granting such further relief as it deems just and proper.

Dated: November 25, 2015
Birmingham, Alabama

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EXHIBIT A

PROPOSED ORDER

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

In re:

WALTER ENERGY, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 15-02741-TOM11

Jointly Administered

**ORDER APPROVING TAFT COAL SALES & ASSOCIATES, INC.'S AND
WALTER MINERALS, INC.'S COMPROMISE AND
SETTLEMENT WITH REGION 10 OF THE NLRB
PURSUANT TO FED. R. BANKR. P. 9019**

Upon the motion (the “Motion”)² of Taft Coal Sales & Associates, Inc. (“Taft”) and Walter Minerals, Inc. (“WM”), two of the debtors in the above-captioned chapter 11 cases (collectively, the “Debtors”), for entry of an order, pursuant to section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”): (i) approving a compromise and settlement by and between Taft, WM, and Region 10 of the National Labor Relations Board (“Region 10,” and together with Taft and WM, the “Settlement Parties”), as evidenced by a *Compliance Agreement* executed on October 2, 2015 (the “Settlement Agreement”); and it appearing that this Court has jurisdiction to consider the Motion

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² Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that adequate and proper notice of the Motion has been given and that no other or further notice need be given; and the Court having held a hearing on the Motion on December 22, 2015 at 10:00 a.m. (prevailing Central Time); and the Court having found that the relief sought in the Motion is in the best interests of the Taft, WM, their estates, their creditors and all other parties in interest; and the legal and factual basis set forth in the Motion having established just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore; it is hereby ORDERED that:

1. The Motion is GRANTED as set forth herein.
2. The Settlement Agreement is hereby approved.
3. The total amount of Taft's and WM's liability for backpay, as determined in the NLRB Proceedings, is \$875,860.56 (the "Settlement Amount"). Region 10 shall amend its Proof of Claim [Claim No. 38] in accordance with the Settlement Amount and the priorities it asserts in the Settlement Agreement within fourteen (14) days of entry of this Order.
4. Nothing in this order determines or adjudicates the validity, priority or allowance of Region 10's claim, including the allowance of any portion of its claim as administrative expense claim under sections 503(b) and 507(a)(2) of the Bankruptcy Code or a priority claim under section 507(a)(4) of the Bankruptcy Code, and all the parties' rights (and the rights of any other party in interest in the Chapter 11 Cases) related thereto are fully preserved; provided, however, that Taft and WM shall not object

to the allowance of Region 10's claim, once amended as set forth above, to the extent and as set forth in the Settlement Agreement.

5. If the Settlement Agreement shall be null and void, of no further force and effect pursuant the terms stated therein, Region 10's Proof of Claim [Claim No. 38] shall be reinstated as if no Settlement Agreement had been entered into without the need for further action or order from this Court.

6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: _____, 2015

THE HONORABLE TAMARA O. MITCHELL
UNITED STATES BANKRUPTCY JUDGE