

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

In re:

NEW WEI, INC., et al.

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

Debtor(s)

**MOTION TO COMPEL COMPLIANCE WITH THIS COURT'S ORDER AS TO THE
TRUSTEE'S MOTION FOR 2004 EXAMINATION OF THE ALABAMA WORKERS'
COMPENSATION SELF-INSURANCE GUARANTY ASSOCIATION**

Chapter 7 Trustee, Andre M. Toffel (the “**Trustee**”) hereby seeks an Order compelling the Alabama Workers’ Compensation Self-Insurance Guaranty Association (the “**Guaranty Association**”) to fully comply with this Court’s June 21, 2019 order (Doc. 3463 – the “**2004 Order**”) granting his Motion for Rule 2004 Examination (Doc. 3456 – the “**2004 Motion**”) by a date certain or face sanctions. In support, the Trustee states the following:

1. On June 14, 2019, the Trustee filed his 2004 Motion which sought leave to conduct a Rule 2004 examination of a representative of the Guaranty Association and asked the Guaranty Association to produce certain documents. (Doc. 3456). This Court entered its 2004 Order on June 21, 2019 and required the following: (1) Guaranty Association would provide responses to the document requests included with the 2004 Motion within fourteen days of the 2004 Order’s entry, and (2) a representative of the Guaranty Association would appear and provide testimony as to matters within the scope of Bankruptcy Rule 2004. (Doc. 3463). The 2004 Order also instructed the Guaranty Association to coordinate the examination with Stephen B. Porterfield, Trustee’s counsel, and directed the Guaranty Association to provide its document production to Mr. Porterfield. (*Id.*).



2. The Guaranty Association has failed to comply with the 2004 Order. The full extent of the ordered document production remains outstanding and the 2004 examination has not taken place. Though representatives of the Guaranty Association have been in contact with counsel for the Trustee and counsel for Warrior Met Coal (“**Warrior Met**”),¹ and a few pages of documents have been provided, the Guaranty Association’s full response remains outstanding three months after this Court’s entry of the 2004 Order. Counsel for the Trustee has been in contact with representatives of the Guaranty Association and has allowed the Guaranty Association additional time to provide its responses to avoid the necessity of filing this motion. Counsel for Warrior Met has made similar efforts to no avail. In accordance, it now appears that court intervention will be required to ensure compliance with the 2004 Order.

3. This Court has the power to enforce its own orders via 11 U.S.C. § 105(a) and its inherent authority to impose sanctions² for contempt. *See In re Brannan*, 485 B.R. 443, 451 (Bankr. S.D. Ala. 2013) (discussing both sources of authority in the context of allegations of fraud upon the court); *In re Bello*, 528 B.R. 562, 567 (Bankr. E.D.N.Y. 2015) (“[I]t has long been recognized that a bankruptcy court, like all federal courts, has the inherent authority to ... impose sanctions on parties and professionals that appear before it.”); *W.S. Badcock Corp. v. Beaman*, 531 B.R. 576, 581 (E.D.N.C. 2015) (“A bankruptcy court has the authority to hold a party in civil contempt and to impose sanctions.”). Moreover, courts have issued civil contempt sanctions in the context of noncompliance with Bankruptcy Rule 2004. *See Beaman*, 531 B.R. at 581-82 (upholding an award of attorney’s fees and costs related to the trustee’s efforts to gain an individual’s compliance

¹ Pursuant to October 13, 2017 Settlement Agreement between the Trustee and Warrior Met, Warrior Met has a direct pecuniary interest in the outcome any litigation the Trustee undertakes on behalf of the Debtors’ Estates and/or the Liquidating Trust created in the settlement.

² Courts have held that “[t]he guidelines provided by [Federal Rule of Civil Procedure] 37(d) may ... shape the court’s determination of sanctions pursuant to its inherent powers.” *Pereira v. Felzenberg*, No. 96 Civ. 7957(RWS), 1997 WL 698186, at *6 (S.D.N.Y., Nov. 7, 1997) (citing cases).

with the bankruptcy court's Rule 2004 orders); *Bello*, 528 B.R. at 567 (explaining that "the Court has inherent authority to sanction Ms. Bello for her failure to appear at the Rule 2004 examinations related to the bankruptcy proceeding" and issuing sanctions); *Matter of Kassuba*, 48 B.R. 292, 293 (S.D. Fla. 1985); *In re McCaulley*, 218 B.R. 866 (Bankr. N.D. Ohio 1998).

4. Therefore, the Trustee asks this Court to enter an order requiring the Guaranty Association to fully comply with the 2004 Order, including producing all requested documents within thirty (30) days of the entry of the order and requiring the Guaranty Association to schedule a Rule 2004 examination as to a Guaranty Association representative to take place within sixty (60) days of the entry of the order. Further, the Trustee asks that monetary sanctions in the form of the Trustee's attorney's fees and costs related to the 2004 Motion and this Motion be assessed against the Guaranty Association if it fails to abide by the terms of the Court's order granting this Motion.

Dated this 27th day of September, 2019.

/s/ Stephen B. Porterfield

Stephen B. Porterfield

Thomas B. Humphries

Counsel for Andre M. Toffel, Trustee

OF COUNSEL:

SIROTE & PERMUTT, P.C.

2311 Highland Avenue South

Post Office Box 55727

Birmingham, AL 35255-5727

T: 205-930-5278

F: 205-313-0655

sporterfield@sirote.com

thumphries@sirote.com

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to all individuals who have requested notice via Bankruptcy Rule 2002 and that I also served a copy of this Motion upon the following via U.S. Mail:

Michael L. Hall
Counsel for Warrior Met Coal, Inc.
Burr & Forman LLP
420 North 20th Street
Suite 3600
Birmingham, AL 35203
mhall@burr.com

Brian R. Walding
Counsel for Guaranty Association
Walding LLC
2227 First Avenue South
Suite 100
Birmingham, AL 35233
bwalding@waldinglaw.com

Alabama Department of Labor
c/o Fitzgerald Washington, Commissioner
649 Monroe Street
Montgomery, Alabama 36131

York Risk Service Group, Inc.
641 South Lawrence Street
Montgomery, AL 36104

York Risk Service Group, Inc.
One Upper Pond Road, Building F, 4th Floor
Parsippany, New Jersey 07054

/s/ Stephen B. Porterfield
OF COUNSEL