

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

In re:	Chapter 7
NEW WEI, INC., <i>et al.</i> , ¹	Case No. 15-02741-TOM7
Debtors	Jointly Administered
HILLSBOROUGH HOLDINGS CORP.,	
Plaintiff,	
v.	Adversary Proceeding No. 15-00127-TOM
THE UNITED STATES OF AMERICA,	
Defendant	

**MOTION FOR APPROVAL OF THE SETTLEMENT AGREEMENT BETWEEN
THE CHAPTER 7 TRUSTEE AND THE UNITED STATES OF AMERICA
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

Andre' M. Toffel, as the Trustee for the Chapter 7 Debtor, New WEI, Inc. (“New WEI”), and on behalf of New WEI, as common parent and agent for its consolidated group and subsidiaries (together, the “New WEI Group” (formerly, the Walter Energy, Inc., Walter Industries, Inc.,

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: New WEI, Inc. (f/k/a Walter Energy, Inc.) (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); New WEI 7, Inc. (f/k/a J.W. Walter, Inc.) (0648); Jefferson Warrior Railroad Company, Inc. (3200); New WEI 2, LLC (f/k/a Jim Walter Homes, LLC) (4589); New WEI 13, Inc. (f/k/a Jim Walter Resources, Inc.) (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); New WEI 19, LLC (f/k/a Walter Black Warrior Basin LLC) (5973); New WEI 18, Inc. (f/k/a Walter Coke, Inc.) (9791); New WEI 22, LLC (f/k/a Walter Energy Holdings, LLC) (1596); New WEI 20, LLC (f/k/a Walter Exploration & Production LLC) (5786); New WEI 1, Inc. (f/k/a Walter Home Improvement, Inc.) (1633); New WEI 6 Company (f/k/a Walter Land Company) (7709); New WEI 16, Inc. (f/k/a Walter Minerals, Inc.) (9714); and New WEI 21, LLC (f/k/a Walter Natural Gas, LLC) (1198). The location of the Debtors’ corporate headquarters is 2100 Southbridge Parkway, Suite 650, Birmingham, Alabama 35209.



Hillsborough Holdings Corp., and Jim Walter Corporation consolidated group)), hereby moves for entry of an order, substantially in the form attached hereto as Exhibit E, pursuant to section 105 of title 11 of the U.S. Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving the Settlement Agreement (the “Settlement Agreement”) between him and the United States of America (the “United States” or the “Government” and, collectively with the Trustee, the “Parties”) that is attached hereto as Exhibit C. Additionally, in furtherance of the Settlement Agreement, Mueller Water Products, Inc. (“Mueller”), and Ditech Holding Corporation and its affiliated debtors and debtors-in-possession in certain bankruptcy cases that are being jointly administered under case number 19-10412 in the United States Bankruptcy Court for the Southern District of New York (“Ditech”),² as former members of the New WEI Group, have recognized that they may be severally liable for the unpaid consolidated income tax liabilities sought to be settled herein (*see* 26 C.F.R. § 1.1502-6(a)), and as a consequence, they have agreed on the manner in which the Settlement Amount (defined below) shall be paid once this Court approves the settlement.³ In support of this motion, the Trustee also relies on (1) the Declaration of Edmond R. Denaburg, attached hereto as Exhibit A, (2) the Declaration of Mark M. Maloney, attached hereto as Exhibit

² The debtors in the chapter 11 cases pending in the United States Bankruptcy Court for the Southern District of New York are: Ditech Holding Corporation; DF Insurance Agency LLC; Ditech Financial LLC; Green Tree Credit LLC; Green Tree Credit Solutions LLC; Green Tree Insurance Agency of Nevada, Inc.; Green Tree Investment Holdings III LLC; Green Tree Servicing Corp.; Marix Servicing LLC; Mortgage Asset Systems, LLC; REO Management Solutions, LLC; Reverse Mortgage Solutions, Inc.; Walter Management Holding Company LLC; and Walter Reverse Acquisition LLC.

³ *See* Order Confirming Third Amended Joint Chapter 11 Plan of Ditech Holding Corporation and its Affiliated Debtors entered in *In re Ditech Holding Corporation, et al.*, Case No. 19-10412 (JLG) (Bankr. S.D.N.Y.) on September 26, 2019 (the “Ditech Confirmation Order”), at ¶¶ 42-48 (the relevant portions of the Ditech Confirmation Order are attached hereto as Exhibit D); and Acknowledgment of Mueller Water Products, Inc. (attached hereto as Exhibit C).

B, and (3) the statements and other exhibits to this motion identified herein. The Trustee respectfully states as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are section 105 of the Bankruptcy Code and Bankruptcy Rule 9019.

BACKGROUND

4. On July 15, 2015 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.
5. During the pendency of the Debtors’ chapter 11 cases, the vast majority of the Debtors’ assets were sold, free and clear, via two separate sales approved by the Court pursuant to 11 U.S.C. § 363.
6. Following the sales, the Debtors began winding down the chapter 11 estates, a process which culminated in a request that this Court convert the Debtors’ cases to cases under chapter 7 of the Bankruptcy Code. *See* Doc. 2849 (Chapter 11 Debtors’ Motion to Convert to Chapter 7).
7. Accordingly, on February 21, 2017, an order (the “Conversion Order”) was entered converting each of the Debtors’ chapter 11 cases to cases under chapter 7 of the Bankruptcy Code. *See* Doc. 2893 (Order Granting Motion to Convert). Andre' M. Toffel is the duly appointed Chapter 7 Trustee. *See* Doc. 2911. Edmond R. Denaburg, of Christian & Denaburg P.C. in Birmingham, Alabama, is the duly appointed financial and tax advisor to the Trustee.

THE FEDERAL INCOME TAX DISPUTE

8. The Settlement Agreement resolves a federal income tax dispute that arose decades prior to the Petition Date relating to the federal consolidated income tax liabilities of the New WEI Group. Specifically, the Settlement Agreement resolves the unpaid consolidated income tax liabilities of the New WEI Group for the tax years ended August 31, 1983, through 1987; May 31, 1988, through 2000; and December 31, 2000, through 2017 (the “New WEI Group Tax Liabilities”).

9. In these chapter 7 cases, the Government has filed proofs of claim (collectively, the “Proofs of Claim”) based on the New WEI Group Tax Liabilities, asserting an amount totaling as much as \$860,440,106, of which \$535,295,576 is asserted as a priority tax claim; the Government’s proof of claim asserted an alternative claim of \$554,280,642, of which \$229,061,857 is asserted as a priority tax claim. *See e.g.*, Proof of Claim No. 5037 filed January 11, 2016.

10. The dispute regarding the New WEI Group Tax Liabilities is also the subject of the above-captioned adversary proceeding – filed initially in 1991 in the United States Bankruptcy Court for the Middle District of Florida, and transferred to this Court in 2015 (the “Adversary Proceeding”).

11. Since the Trustee’s appointment in early 2017, the Trustee, the United States, Mueller, and Ditech have been engaged in efforts to resolve the New WEI Group Tax Liabilities. Mueller and Ditech have been integrally involved as a result of their prior corporate affiliation with the New WEI Group, and the resulting potential for several liability for the tax liabilities.

12. The United States, Mueller, and Ditech have been similarly engaged in efforts to address the New WEI Group Tax Liabilities in Ditech’s chapter 11 bankruptcy cases pending in

the United States Bankruptcy Court for the Southern District of New York (the “New York Bankruptcy Court”).

13. Collectively, these good faith, arms’ length negotiations have culminated in the Settlement Agreement, attached hereto as Exhibit C⁴, that, upon approval by this Court, will finally resolve the New WEI Group Tax Liabilities, which have been the subject of litigation for over 28 years. Subject to this Court’s approval, Ditech is authorized to proceed with, and fund a portion of the amount required to be paid under the Settlement Agreement, pursuant to the Ditech Confirmation Order, (attached hereto as Exhibit D). As set forth in the Ditech Confirmation Order, and the Settlement Agreement, Ditech shall satisfy its share of the total Settlement Amount (defined below) through a combination of a cash payment and the IRS’s offset of certain tax overpayments, against the New WEI Group Tax Liabilities (the “Ditech Payments”). After taking into account the Ditech Payments, Mueller shall pay the unpaid balance of the Settlement Amount (defined below).

14. Accordingly, the Trustee requests that the Court approve the Settlement Agreement and enter the Proposed Order.

RELIEF REQUESTED

15. By this motion, the Trustee seeks the entry of an order, substantially in the form of the Proposed Order, pursuant to section 105 of the Bankruptcy Code and Bankruptcy Rule 9019, approving the settlement between the Trustee and the United States, on the terms contained in the Settlement Agreement.

⁴ The Settlement Agreement consists of that certain offer letter from the Trustee to the Government dated November 5, 2019, and that certain acceptance letter from the Government to the Trustee dated November 5, 2019. These two documents, together, constitute the binding settlement agreement of the Parties, and are attached hereto as Exhibit C.

16. The Settlement Agreement is attached hereto as Exhibit C and incorporated herein by this reference. The salient terms of the Settlement Agreement may be summarized as follows:

- The agreed federal consolidated income tax liabilities of the New WEI Group as of October 31, 2019 shall be \$39,015,404.60, an amount which shall accrue interest under applicable law and regulations until paid (the “Settlement Amount”).
- Upon the United States’ receipt of the entire Settlement Amount, New WEI and the New WEI Group, including but not limited to Mueller and Ditech, shall be deemed fully and forever released and discharged from any and all civil liabilities or obligations arising out of or in connection with the New WEI Group Tax Liabilities.
- The Settlement Amount shall be satisfied solely by payments from Mueller and Ditech, as set forth in the Settlement Agreement and the Ditech Confirmation Order.
- No portion of the Settlement Amount shall be funded by the Debtors.
- Within ten calendar days of the United States’ receipt of the entire Settlement Amount and in accordance with the terms of the Settlement Agreement, (1) the Proofs of Claim filed in this case and the Ditech chapter 11 bankruptcy case shall be withdrawn, with prejudice; (2) the Adversary Proceeding shall be dismissed with prejudice, with each party thereto bearing its own attorneys’ fees and costs (in a form substantively consistent with the attached Exhibit F); and (3) the United States’ Motion to Enforce Settlement (Doc. 3166) shall be

withdrawn with prejudice, with each party thereto bearing its own attorneys' fees and costs (in a form substantively consistent with the attached Exhibit G).

17. In addition to the foregoing, Mueller has agreed to pay to the Chapter 7 Trustee \$53,168.38 on account of certain tax credits included in the computation of the Settlement Amount. This payment represents the amount of certain tax credits owed to the Debtors' estates on account of the 2015 tax year – an amount consisting of \$48,720 as of March 2016, plus accrued interest through November 15, 2019.

BASIS FOR RELIEF REQUESTED

18. Section 105(a) of the Bankruptcy Code grants bankruptcy courts broad authority and discretion to enforce the provisions of the Bankruptcy Code under equitable common law principles. Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

19. Bankruptcy Rule 9019, which governs the approval of compromises and settlements, provides that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed R. Bankr. P. 9019(a). The decision to approve a particular settlement lies within the sound discretion of the Bankruptcy Court. *In re Tarrant*, 349 B.R. 870, 893 (Bankr. N.D. Ala. 2006).

20. A starting point in analyzing any proposed settlement is the general policy of encouraging settlements and favoring compromises. *See Myers v. Martin (In re Martin)*, 91 F.3d

389, 394 (3d Cir. 1996). In evaluating a settlement under Bankruptcy Rule 9019, bankruptcy courts consider the following factors:

a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Wallis v. Justice Oaks II, Ltd (In re Justice Oaks II, Ltd.), 898 F.2d 1544, 1549 (11th Cir. 1990); *In re Aloha Racing Found., Inc.*, 257 B.R. 83, 88 (Bankr. N.D. Ala. 2000). These factors are applied to assist the Court in determining whether the settlement is fair and equitable under the circumstances. *Tarrant*, 349 B.R. at 893.

21. In performing this analysis, a bankruptcy court should not substitute its own judgment for that of the debtor. *In re Harbour East Dev., Ltd.*, 2012 WL 1851015, at *1 (Bankr. S.D. Fla. May 21, 2012); *In re Sportsman's Link, Inc.*, 2011 WL 7268047, at *19 (Bankr. S.D. Ga. Dec. 20, 2011); *In re Diplomat Constr., Inc.*, 454 B.R. 917, 920 (Bankr. N.D. Ga. 2011). Nor does the court decide the numerous questions of law or fact raised by litigation; rather, it should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness. *See In re Van Diepen, P.A.*, 236 Fed. Appx. 498, 501 (11th Cir. 2007); *Aloha Racing*, 257 B.R. at 88. Thus, the Court should approve the Settlement Agreement if it does not fall beneath the “lowest point in the range of reasonableness.”

22. The Trustee believes that the Settlement Agreement is in the best interests of the Debtors' estates as it represents a global agreement entered into between the Trustee and the United States to resolve the New WEI Group Tax Liabilities asserted in the Proofs of Claim and the Adversary Proceeding – totaling close to \$1 billion, including hundreds of millions of dollars in alleged priority tax claims.

23. The Settlement Agreement falls well within the range of reasonableness and is fair, reasonable, and in the best interests of the Debtors' estates and creditors. In addition to resolving the total asserted liabilities for a small fraction of their stated alleged value, none of the Settlement Amount will be funded by the Debtors' estates. As such, the Settlement Agreement represents an optimal result for the Debtors' estates.

24. Further litigation of these matters would not benefit the estates and would instead cost the Parties, including these estates, substantial time, money, and resources. By entering into the Settlement Agreement, the Trustee is able to mitigate litigation risk and avoid the cost of even more protracted litigation. Because the Settlement Agreement will eliminate any liability of the estates for the tax years at issue – including hundreds of millions of dollars in asserted priority claims – with no cost to the estates, the benefit to the estates and the reasonableness of this settlement is unquestionable.

25. In light of the foregoing, the proposed Settlement Agreement reflects fair and reasonable compromises of the matters addressed therein, and is therefore well within the “range of reasonable compromises,” and should be approved. *See Van Diepen, P.A.*, 236 Fed. Appx. at 501.

26. For these reasons, the Trustee requests that the Settlement Agreement be approved.

NOTICE

27. The Trustee will provide notice of this Motion and the hearing in accordance with the Court's Order Approving Notice entered on October 31, 2019 in the above-described Adversary Proceeding at Doc. 204.

CONCLUSION

WHEREFORE, the Trustee respectfully requests entry of the Proposed Order attached as Exhibit E, approving the Settlement Agreement and granting such other relief as is just and proper.

Dated: November 5, 2019
Birmingham, Alabama

By: /s/ Stephen B. Porterfield
Stephen B. Porterfield
Thomas B. Humphries
SIROTE & PERMUTT, P.C.
2311 Highland Avenue South
Post Office Box 55727
Birmingham, AL 35255-5727
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Counsel for the Trustee

EXHIBIT A
DENABURG DECLARATION

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

In re:	Chapter 7
NEW WEI, INC., <i>et al.</i> ,	Case No. 15-02741-TOM7
Debtors	Jointly Administered
HILLSBOROUGH HOLDINGS CORP.,	
Plaintiff,	
v.	Adversary Proceeding No. 15-00127-TOM
THE UNITED STATES OF AMERICA,	
Defendant	

**DECLARATION OF EDMOND R. DENABURG IN SUPPORT OF THE MOTION
FOR APPROVAL OF THE SETTLEMENT AGREEMENT BETWEEN
THE CHAPTER 7 TRUSTEE AND THE UNITED STATES OF AMERICA
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

I, Edmond R. Denaburg, hereby declare as follows:

1. My name is Edmond R. Denaburg. I am a CPA and a shareholder of Christian & Denaburg, P.C., an accounting and financial advisory firm in Birmingham, Alabama. I serve as financial and tax advisor to the Chapter 7 Trustee of New WEI, Inc, and its affiliated debtors in these chapter 7 bankruptcy cases.⁵ I make this declaration in support of the above-referenced

⁵ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: New WEI, Inc. (f/k/a Walter Energy, Inc.) (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); New WEI 7, Inc. (f/k/a J.W. Walter, Inc.) (0648); Jefferson Warrior Railroad Company, Inc. (3200); New WEI 2, LLC (f/k/a Jim Walter Homes, LLC) (4589); New WEI 13, Inc. (f/k/a Jim Walter Resources, Inc.) (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); New WEI 19, LLC (f/k/a Walter Black Warrior Basin LLC) (5973); New WEI 18, Inc. (f/k/a Walter Coke, Inc.) (9791); New WEI 22, LLC (f/k/a Walter Energy Holdings, LLC) (1596); New WEI 20, LLC (f/k/a Walter Exploration & Production LLC) (5786); New WEI

motion (the “Motion”). Unless otherwise noted, capitalized terms in this Declaration shall have the meanings set forth in the Motion, which I have reviewed.

2. In my capacity as financial and tax advisor to the Trustee, I have become familiar with the tax dispute described in the Motion, including through a review of pleadings and other documents relevant to the dispute, discussions with Government representatives, and discussions and consultations with professionals who have been involved with this tax dispute prior to my appointment. As a result, I have satisfied myself that I have sufficient information on, and understanding of, these matters to recommend to the Trustee the approval of the Settlement Agreement.

3. In these chapter 7 cases, the Government has submitted Proofs of Claim asserting federal consolidated income tax liabilities of the New WEI Group in an amount totaling as much as \$860,440,106, of which \$535,295,576 is asserted as a priority tax claim; the Government’s proof of claim asserted an alternative claim of \$554,280,642, of which \$229,061,857 is asserted as a priority tax claim. The dispute regarding the New WEI Group Tax Liabilities is also the subject of the Adversary Proceeding, filed initially in 1991 in the United States Bankruptcy Court for the Middle District of Florida, and transferred to this Court in 2015.

4. Since the Trustee’s appointment in early 2017, I have worked with counsel for the Trustee, the Government, Mueller, and Ditech in efforts to resolve the liabilities.

5. These good faith, arms’ length negotiations have culminated in the Settlement Agreement, attached to the Motion as Exhibit C, that, upon approval by this Court, will finally resolve the New WEI Group Tax Liabilities, which have been the subject of litigation for over 28

1, Inc. (f/k/a Walter Home Improvement, Inc.) (1633); New WEI 6 Company (f/k/a Walter Land Company) (7709); New WEI 16, Inc. (f/k/a Walter Minerals, Inc.) (9714); and New WEI 21, LLC (f/k/a Walter Natural Gas, LLC) (1198). The location of the Debtors’ corporate headquarters is 2100 Southbridge Parkway, Suite 650, Birmingham, Alabama 35209.

years. The Trustee and the United States have approved the Settlement Agreement subject to this Court's ultimate approval and authorization.

6. I believe the Settlement Agreement is in the best interests of the Debtors' estates as it represents a global agreement entered into between the Trustee and the United States to resolve the New WEI Group Tax Liabilities asserted in the Proofs of Claim and the Adversary Proceeding – totaling nearly \$900 million, including hundreds of millions of dollars in alleged priority tax claims, as of the Petition Date.

7. I believe further litigation of these matters would not benefit the estates and would instead cost the Parties, including these estates, substantial time, money, and resources.

8. By entering into the Settlement Agreement, the Trustee will eliminate the need for further costs or time commitment to these matters, and eliminate hundreds of millions of dollars in asserted priority tax claims – all with no cost to the estates.

9. Further, as part of the resolution, Mueller has agreed to pay to the Chapter 7 Trustee \$53,168.38 on account of certain tax credits included in the computation of the Settlement Amount. This payment represents the amount of certain tax credits owed to the Debtors' estates on account of the 2015 tax year – an amount consisting of \$48,720 as of March 2016, plus accrued interest through November 15, 2019.

10. For all of these reasons, I believe the proposed settlement is in the best interests of these chapter 7 bankruptcy estates and their creditors.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of November, 2019.


Edmond R. Denaburg

EXHIBIT B

MARK M. MALONEY DECLARATION

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

In re: NEW WEI, INC., <i>et al.</i> , Debtors	Chapter 7 Case No. 15-02741-TOM7 Jointly Administered
HILLSBOROUGH HOLDINGS CORP., Plaintiff, v. THE UNITED STATES OF AMERICA, Defendant	Adversary Proceeding No. 15-00127-TOM

**DECLARATION OF MARK M. MALONEY IN SUPPORT OF THE MOTION
FOR APPROVAL OF THE SETTLEMENT AGREEMENT BETWEEN
THE CHAPTER 7 TRUSTEE AND THE UNITED STATES OF AMERICA
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

I, Mark M. Maloney, hereby declare as follows:

1. My name is Mark M. Maloney. I am a partner in the law firm King & Spalding LLP, which represents Mueller Water Products, Inc. ("Mueller"), a creditor in these bankruptcy cases and a party in interest with respect to the above-referenced motion (the "Motion"), which Motion I have reviewed. Unless otherwise noted, capitalized terms used in this declaration have the meanings set forth in the Motion.

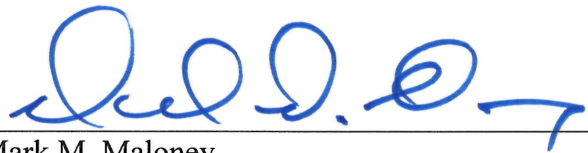
2. In my capacity as counsel to Mueller I have become familiar with the tax controversy that is the subject of the Motion, and I have been personally involved in the negotiations leading up to the Settlement Agreement.

3. Attached as Exhibit C to the Motion is a true and correct copy of the Settlement Agreement.

4. Attached as Exhibit D to the Motion is a true and correct copy of the relevant portions of the Ditech Confirmation Order. The Ditech Confirmation Order reflects the terms agreed to by Ditech, and approved by the New York Bankruptcy Court, concerning Ditech's contribution toward the payment of the Settlement Amount.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of November, 2019.



Mark M. Maloney

EXHIBIT C
SETTLEMENT AGREEMENT

November 5, 2019

**VIA FEDERAL EXPRESS
AND E-MAIL**

Lynne M. Murphy
Trial Attorney, Tax Division
U.S. Department of Justice
555 Fourth Street, N.W.
Room 6219
Washington, D.C. 20001

VIA E-MAIL

William F. Barry
Senior Trial Attorney
Internal Revenue Service
Office of Division Counsel (LB&I)
400 W. Bay Street
Suite 240
Jacksonville, Florida 32202

Re: In re New WEI, Inc., et al.
Case No. 15-02741-TOM-7

Hillsborough Holdings Corp. v. United States
Adv. Proc. No. 15-00127-TOM (Bankr. N.D. Ala.)

Dear Ms. Murphy and Mr. Barry:

I, as the Trustee for the Chapter 7 Debtor, New WEI, Inc. (“Chapter 7 Trustee”), submit this offer on behalf of the Debtor, New WEI, Inc. (“New WEI”), as common parent and agent for its consolidated group and subsidiaries (together, the “New WEI Group” (formerly, the Walter Energy, Inc., Walter Industries, Inc., Hillsborough Holdings Corp., and Jim Walter Corporation consolidated group)), to settle and compromise the unpaid consolidated income tax liabilities of the New WEI Group for the tax years ended August 31, 1983, through 1987; May 31, 1988, through 2000; and December 31, 2000, through 2017, plus interest thereon (collectively, the “New WEI Group Tax Liabilities”), based on the following terms:

- (1) The Chapter 7 Trustee of New WEI, as common parent and agent for its consolidated group and subsidiaries, and the United States (collectively, referred to herein as the “parties”) agree to settle the New WEI Group Tax Liabilities for the sum of \$39,015,404.60 as of October 31, 2019, plus interest thereon until paid (the “New WEI Settled Tax Liabilities”), subject to and conditioned upon approval of a full and controlling written settlement agreement by the United States Bankruptcy Court for the Northern District of Alabama (“Alabama Bankruptcy Court”) in *In re New WEI, Inc., et al.*, Case No. 15-02741-TOM-7 and *Hillsborough Holdings Corp. v. United States*, Adv. Proc. No. 15-00127-TOM (the “New WEI Settlement”).

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- (2) Within five calendar days of entry of an order by the Alabama Bankruptcy Court approving the New WEI Settlement, Ditech Holding Corporation (“Ditech”) and Mueller Water Products, Inc. (“MWP”) shall pay in full the New WEI Settled Tax Liabilities in the following manner and in accordance with the terms of the Order Confirming Third Amended Joint Chapter 11 Plan of Ditech Holding Corporation and its Affiliated Debtors entered in *In re Ditech Holding Corporation, et al.*, Case No. 19-10412 (JLG) (Bankr. S.D.N.Y.) on September 26, 2019 (“Ditech Confirmation Order”), at paragraphs 42 through 48:
- (a) Ditech shall cause the sum of \$2,735,000.00 to be disbursed from the escrow account that Ditech established for the benefit of the Internal Revenue Service (“IRS”) pursuant to the Ditech Confirmation Order, to the United States.
 - (b) The IRS shall set off the overpayments of consolidated income taxes of Ditech Holding Corporation and its subsidiaries (together, the “Ditech Group”) for the tax years 2013 and 2014, net of the agreed tax deficiencies of the Ditech Group for the tax years 2015 and 2016 in the approximate amounts of \$280,000 and \$204,000, respectively (subject to interest netting, if applicable, pursuant to 26 U.S.C. § 6621(d)) (the “Ditech Group Overpayments”), an amount estimated to be \$14,215,709.32, including interest thereon as of October 31, 2019, against the New WEI Settled Tax Liabilities.
 - (c) MWP shall pay the balance of the New WEI Settled Tax Liabilities after taking into account the payments made by Ditech pursuant to subparagraphs (2)(a) and (b), above, an amount estimated to be approximately \$22,064,695.28 as of October 31, 2019, to the United States in accordance with the instructions set forth in paragraph (10), below.
- (3) The Chapter 7 Trustee, on behalf of New WEI, as common parent and agent for its consolidated group and subsidiaries, including but not limited to Ditech and MWP, waives any and all rights to file an administrative refund claim, seeking to recover a refund of any or all payments or setoffs made in satisfaction of the New WEI Settled Tax Liabilities pursuant to subparagraphs (2)(a), (b) and (c), above. Further, Ditech, on its behalf and as common parent and agent for its consolidated group and subsidiaries, known as the Ditech Group, has fully, finally and forever surrendered, relinquished and released any right, title or interest in the Ditech Group Overpayments. See ¶ 2(b), *supra*; Ditech Confirmation Order, at ¶ 44. Ditech also has waived any and all rights to challenge the IRS’s ability to collect from the escrow account once the Alabama Bankruptcy Court approves the New WEI Settlement. See ¶ 2(a), *supra*; Ditech Confirmation Order, at ¶ 44.

- (4) Within five calendar days of entry of an order by the Alabama Bankruptcy Court approving the New WEI Settlement, the Chapter 7 Trustee, on behalf of New WEI, as common parent and agent for its consolidated group and subsidiaries, shall execute and return to the United States, by and through Lynne M. Murphy, the trial attorney assigned to handle this case:
- (a) a Form 870, “Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment,” for the New WEI Group Tax Liabilities for the tax years ended May 31, 2000; December 31, 2000, through 2002; and December 31, 2004, through 2006;
 - (b) a Joint Stipulation of Dismissal, dismissing the adversary proceeding, *Hillsborough Holdings*, Adv. Proc. No. 15-00127-TOM, with prejudice; and
 - (c) a Joint Stipulation of the Withdrawal of the United States’ Motion To Enforce Settlement, Enter Judgment and Lift Stay (Doc. 3166) filed in *In re New WEI*, Case No. 15-02741-TOM-7, with prejudice.
- (5) Upon the United States’ receipt of all payments identified in paragraph (2), above, New WEI and the New WEI Group, including but not limited to Ditech and MWP, shall be deemed fully and forever released and discharged from any and all civil liabilities or obligations arising out of or in connection with the New WEI Group Tax Liabilities.
- (6) Within ten calendar days of the United States’ receipt of all payments identified in paragraph (2), above, the United States, by and through the IRS, shall:
- (a) withdraw its Proofs of Claim filed in *In re New WEI*, Case No. 15-02741-TOM-7, with prejudice;
 - (b) withdraw its Proof of Claim filed in *In re Ditech*, Case No. 19-10412 (JLG), with prejudice; and
 - (c) issue Form 866, “Agreement As to Final Determination of Tax Liability,” for the New WEI Group Tax Liabilities for the tax years ended May 31, 1996, through 2000; and December 31, 2000, through 2017 (“Closing Agreement”), to the Chapter 7 Trustee for him to execute, on behalf of New WEI, as common parent and agent for its consolidated group and subsidiaries, in triplicate, and return to the IRS, by and through Lynne M. Murphy, via overnight mail. Within ten (10) calendar days of the IRS receiving the properly executed Closing Agreements, the Commissioner of Internal Revenue or his delegate will

execute the agreements, and the IRS will send signed Closing Agreements to counsel for the Chapter 7 Trustee, Ditech and MWP.

- (7) Within ten calendar days of the United States' receipt of all payments identified in paragraph (2), above, the United States shall file:
- (a) the Joint Stipulation of Dismissal, dismissing the adversary proceeding, *Hillsborough Holdings*, Adv. Proc. No. 15-00127-TOM, with prejudice; and
 - (b) the Joint Stipulation of the Withdrawal of the United States' Motion To Enforce Settlement, Enter Judgment and Lift Stay (Doc. 3166) filed in *In re New WEI*, Case No. 15-02741-TOM-7, with prejudice.
- (8) Within fifteen calendar days of entry of an order by the Alabama Bankruptcy Court approving the New WEI Settlement, MWP shall pay to the Chapter 7 Trustee \$53,168.38 on account of certain tax credits included in the computation of the New WEI Settled Tax Liabilities identified in paragraph (1), above. This payment represents the amount of certain tax credits owed to the Debtors' estates on account of the 2015 tax year – an amount consisting of \$48,720 as of March 2016, plus accrued interest through November 15, 2019.
- (9) The parties acknowledge and agree that the IRS has not examined, verified or determined: (a) the amount of New WEI Group's consolidated net operating losses ("NOLs") available from the tax years ended December 31, 2013, through 2017; (b) the amount of the NOLs available for carryforward to tax periods after December 31, 2017; and (c) how and whether 26 U.S.C. §§ 108, 381, 382, the SRLY rules, or any other provisions may prevent or limit the use of any of such NOLs by any other entity for any year. Specifically, the IRS has not determined whether Warrior Met Coal LLC (f/k/a Coal Acquisition, LLC) ("Warrior Met") and/or Seminole Coal Resources, LLC, ERP Compliant Coke, LLC and ERP Environmental (collectively, "Seminole") in connection with the asset sales that closed on March 31, 2016, are entitled to deduct or use any NOLs, credits or other tax attributes that may or may not be available. Accordingly, this settlement shall not prevent or otherwise bar the IRS from challenging any use or deduction of the NOLs or any other tax attributes that Warrior Met, Seminole or any other entity may claim on their returns.
- (10) The payment identified in subparagraph (2)(c), above, shall be made, via Fedwire Electronic Funds Transfer ("FEFT"). Upon approval of the New WEI Settlement by the Alabama Bankruptcy Court, William E. Thompson of the Financial Litigation Unit for the U.S. Department of Justice, Tax Division, will forward a FEFT form, including instructions, to counsel for MWP for transmission to MWP. MWP, in turn, shall give the FEFT form to its bank from which the funds are being

electronically transferred so that the bank may ensure that the funds are properly credited to the U.S. Department of Justice, Tax Division, in accordance with the terms of this global settlement.

- (11) This agreement constitutes the entire and complete settlement agreement of the parties. The parties acknowledge and agree that there are no communications or oral understandings contrary, different, or that in any way restrict this settlement agreement, and that all prior agreements or understandings within the scope of the subject matters of this settlement agreement are, upon execution of this agreement, superseded, null and void.
- (12) No waiver, modification or amendment of the terms of the New WEI Settlement shall be valid or binding unless made in writing, signed by all parties, and then only to the extent as set forth in such written waiver, modification or amendment.
- (13) The parties may execute this settlement agreement in whole or in counterparts, and execution of the counterparts shall have the same force and effect as if the parties have signed the same instrument. Signatures transmitted electronically or by facsimile shall have the same effect as original signatures.
- (14) In the event that there is any dispute over the interpretation of any terms of this settlement agreement, all parties, collectively, shall be considered the drafting party and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall be inapplicable.
- (15) Each party shall bear its own costs, including any attorneys' fees.
- (16) Notwithstanding any other provisions to the contrary herein, the New WEI Settlement is conditioned upon acceptance of this offer by the United States, by and through the Attorney General of the United States or his delegate, and the Commissioner of Internal Revenue or his delegate.
- (17) Notwithstanding the possible application of Bankruptcy Rule 8007, the terms and conditions of the New WEI Settlement shall become immediately effective and enforceable upon entry of an order by the Alabama Bankruptcy Court approving the settlement pursuant to Bankruptcy Rule 9019(a). In the event, however, that the Alabama Bankruptcy Court does not approve the settlement, the New WEI Settlement shall be deemed null and void, and the parties shall be returned to the *status quo* prior to entry of this agreement.
- (18) The Chapter 7 Trustee and his counsel shall be responsible for preparing and filing all documents, including notices, that are necessary to secure court approval of the New WEI Settlement in form and substance reasonably satisfactory to all parties.

- (19) Upon court approval of the New WEI Settlement, the Alabama Bankruptcy Court shall retain jurisdiction to modify, interpret or enforce the terms of this settlement.

Thank you for your assistance and cooperation with this matter. If you should have any questions, please call my counsel, Stephen B. Porterfield, Esq., at (205) 930-5278 or e-mail him at sporterfield@sirote.com.

Sincerely yours,



Andre' M. Toffel
Trustee for the Chapter 7 Debtor,
New WEI, Inc., as Common Parent
and Agent for Its Consolidated
Group and Subsidiaries

ACKNOWLEDGEMENT OF MUELLER WATER PRODUCTS, INC.:

Mueller Water Products, Inc., as a former member of New WEI, Inc.'s consolidated group, and by and through its authorized representative, hereby acknowledges its obligations under this offer and agrees to fulfill those obligations only if the offer is accepted by the United States, by and through the Attorney General of the United States or his delegate, and the Commissioner of Internal Revenue or his delegate, and approved by the United States Bankruptcy Court for the Northern District of Alabama.

MUELLER WATER PRODUCTS, INC.



[Signature]

Date: 11/5/19

Steven S. Heinrichs

[Print Name]

Chief Legal and Compliance Officer

Executive Vice President, General Counsel and Secretary

[Title]

cc: **VIA REGULAR MAIL
AND E-MAIL**

Abraham N.M. Shashy, Jr., Esq.
Mark M. Maloney, Esq.
KING & SPALDING LLP
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Jay E. Town
United States Attorney
for the Northern District of Alabama
1801 4th Avenue North
Birmingham, Alabama 35203
Attention: Edward Q. Ragland, Esq.



**U.S. Department of Justice
Tax Division
Civil Trial Section, Southern Region**

*Trial Attorney: Lynne M. Murphy
Attorney's Direct Line: 202-514-5881*

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REZ:AAF:LMMurphy\HHC&WEN\tr.aso
DJs 5-17M-10107 & 5-1-7275
CMNs 1991168138 & 2016101473

November 5, 2019

**VIA FEDERAL EXPRESS
AND E-MAIL**

Mr. Andre' M. Toffel
Trustee for the Chapter 7 Debtor,
New WEI, Inc.,
c/o Stephen B. Porterfield, Esq.
Thomas B. Humphries, Esq.
SIROTTE & PERMUTT, P.C.
2311 Highland Avenue South
Post Office Box 55727
Birmingham, Alabama 35255

Re: In re New WEI, Inc., et al.
Case No. 15-02741-TOM-7

Hillsborough Holdings Corp. v. United States
Adv. Proc. No. 15-00127-TOM (Bankr. N.D. Ala.)

Dear Mr. Toffel:

This letter advises you that the offer that you, as the Trustee of the Chapter 7 Debtor, New WEI, Inc. ("New WEI"), submitted on behalf of New WEI, as common parent and agent for its consolidated group and subsidiaries (together, the "New WEI Group" (formerly, the Walter Energy, Inc., Walter Industries, Inc., Hillsborough Holdings Corp., and Jim Walter Corporation consolidated group)), by letter dated November 5, 2019, to settle and compromise the unpaid consolidated income tax liabilities of the New WEI Group for the tax years ended August 31, 1983 through 1987; May 31, 1988 through 2000; and December 31, 2000 through 2017, plus interest thereon (collectively, the "New WEI Group Tax Liabilities"), has been accepted on behalf of the Attorney General of the United States with regard to the New WEI Group Tax Liabilities for the tax years ended August 31, 1983, through 1987; and May 31, 1988, through 1995; and the Commissioner of Internal Revenue for the New WEI Group Tax Liabilities for the tax years ended May 31, 1996, through 2000; and December 31, 2000, through 2017.

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Upon approval of the settlement by the United States Bankruptcy Court for the Northern District of Alabama, Mr. William E. Thompson of the Financial Litigation Unit for the U.S. Department of Justice, Tax Division, will forward Fedwire Electronic Funds Transfer ("FEFT") forms, including instructions, to Citibank, N.A. and counsel for Mueller Water Products, Inc. ("MWP") for transmission to MWP or MWP's bank. Citibank and MWP's bank should use the FEFT forms to ensure that the funds electronically transferred on behalf of Ditech and MWP, respectively, are properly credited to the U.S. Department of Justice, Tax Division, in accordance with the terms of the global settlement and the Ditech Confirmation Order.

Thank you for your assistance and cooperation with this matter. If you or a member of your staff should have any questions regarding this letter, please contact Lynne M. Murphy, the trial attorney assigned to handle this case, at (202) 514-5881.

Sincerely yours,


RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

By:


ANGELO A. FRATTARELLI
Chief, Civil Trial Section, Southern Region

AND

By:


Keith A. Henley
Director of Field Operations Southeast
Eastern Compliance Practice Area
Large Business and International Division,
Services and Enforcement
Internal Revenue Service

cc: **VIA REGULAR MAIL
AND E-MAIL**

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Jay E. Town
United States Attorney
for the Northern District of Alabama
1801 4th Avenue North
Birmingham, Alabama 35203
Attention: Edward Q. Ragland, Esq.

EXHIBIT D

DITECH CONFIRMATION ORDER

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	X	
	:	
In re	:	Chapter 11
	:	
DITECH HOLDING CORPORATION, et al.,	:	Case No. 19-10412 (JLG)
	:	
Debtors.¹	:	(Jointly Administered)
	:	Related Docket No. 1326
-----	X	

**ORDER CONFIRMING THIRD AMENDED JOINT CHAPTER 11 PLAN OF
DITECH HOLDING CORPORATION AND ITS AFFILIATED DEBTORS**

Upon the filing by Ditech Holding Corporation and its affiliated debtors in the above captioned chapter 11 cases (collectively, the “**Debtors**”), as “proponents of the plan” within the meaning of section 1129 of title 11 of the United States Code (the “**Bankruptcy Code**”), of the *Third Amended Joint Chapter 11 Plan of Ditech Holding Corporation and Its Affiliated Debtors*, dated September 22, 2019 [ECF No. 1326] (as amended, modified, or supplemented in accordance with its terms, the “**Third Amended Plan**”), which is attached hereto as **Exhibit A**;² and the Court previously having approved the *Amended Disclosure Statement for Amended Joint Chapter 11 Plan of Ditech Holding Corporation and Its Affiliated Debtors*, dated May 10, 2019 [ECF No. 543] (the “**Disclosure Statement**”) and the solicitation procedures related to the Disclosure Statement, Third Amended Plan, and the *Disclosure*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Ditech Holding Corporation (0486); DF Insurance Agency LLC (6918); Ditech Financial LLC (5868); Green Tree Credit LLC (5864); Green Tree Credit Solutions LLC (1565); Green Tree Insurance Agency of Nevada, Inc. (7331); Green Tree Investment Holdings III LLC (1008); Green Tree Servicing Corp. (3552); Marix Servicing LLC (6101); Mortgage Asset Systems, LLC (8148); REO Management Solutions, LLC (7787); Reverse Mortgage Solutions, Inc. (2274); Walter Management Holding Company LLC (9818); and Walter Reverse Acquisition LLC (8837). The Debtors’ principal offices are located at 1100 Virginia Drive, Suite 100, Fort Washington, Pennsylvania 19034.

² Capitalized terms used in this order (the “**Order**”) but not otherwise defined herein shall have the meanings ascribed to such terms in the Third Amended Plan (as defined below), or as the context otherwise requires.

authorizations and approvals without the Buyer's compliance with all applicable legal requirements under non-bankruptcy law governing such transfers.

IRS Settlement

42. New WEI, Inc. ("**New WEI**"), on its own behalf and as common parent and agent for its consolidated group and subsidiaries, and the United States of America (the "**United States**"), by and through the Internal Revenue Service (the "**IRS**"), have agreed on a global settlement in principle of the unpaid consolidated income tax liabilities of New WEI, its consolidated group and its subsidiaries (together, the "**New WEI Group**" (formerly, the Walter Energy, Inc., Walter Industries, Inc., Hillsborough Holdings Corp., and Jim Walter Corporation consolidated group)) for the tax years ended August 31, 1983, through 1987; May 31, 1990, through 1994; May 31, 2000; December 31, 2000, through 2002; and December 31, 2004, through 2006, plus interest thereon (collectively, the "**New WEI Group Tax Liabilities**" or "**New WEI Group Tax Debts**"). New WEI and the United States have agreed in principle to settle the New WEI Group Tax Liabilities for the sum of approximately \$37,397,495.92 as of January 31, 2019, plus interest thereon (totaling approximately \$39 million as of September 30, 2019) (the "**New WEI Settled Tax Liabilities**"), subject to and conditioned upon approval of a full and controlling written settlement agreement by the United States Bankruptcy Court for the Northern District of Alabama ("**Alabama Bankruptcy Court**"), *In re New WEI, Inc., et al.*, Case No. 15-02741-TOM7 and *Hillsborough Holdings Corp. v. United States*, Adv. Proc. No. 15-00127-TOM (the "**New WEI Settlement**").

43. Certain of the Debtors and Mueller Water Products, Inc. ("**Mueller Water**"), as former members of the New WEI Group, may be severally liable for the New WEI Group Tax Debts. *See* 26 C.F.R. § 1.1502-6(a). Accordingly, in recognition of certain of the Debtors' and Mueller Water's potential respective several obligations for the New WEI Group

Tax Liabilities, the Debtors and Mueller Water have agreed that they will pay the New WEI Settled Tax Liabilities as follows: (a) the Debtors shall pay in the manner set forth in Paragraphs 44 and 455, below (the “**Debtors’ Payment**”), an amount that is estimated to be approximately \$16.5 million as of September 30, 2019; and (b) Mueller Water shall pay the balance of the New WEI Settled Tax Liabilities after taking into account the Debtors’ Payment, an amount that is estimated to be approximately \$22.5 million as of September 30, 2019.

44. The Debtors agree that they shall fund the Debtors’ Payment as follows: (a) by authorizing the IRS to set off the overpayments of consolidated income taxes of Ditech Holding Corporation and its subsidiaries (together, the “**Ditech Group**”) for the tax years 2013 and 2014 net of the agreed tax deficiencies of the Ditech Group for the tax years 2015 and 2016 in the approximate amounts of \$280,000 and \$204,000, respectively (subject to interest netting, if applicable, pursuant to 26 U.S.C. § 6621(d)) (the “**Ditech Group Overpayments**”), an amount estimated to be approximately \$13.8 million, including interest thereon as of September 30, 2019, against the New WEI Settled Tax Liabilities, and with respect to the Ditech Group Overpayments, the Debtors shall be deemed to have fully, finally and forever surrendered, relinquished and released any right, title or interest in such overpayments; and (b) upon occurrence of the Effective Date, the Debtors shall deposit the sum of \$2,735,000 in an escrow account for the benefit of the IRS (the “**IRS Escrowed Amount**”), and with respect to said escrow account, the Debtors shall be deemed to have waived any and all rights to challenge the IRS’s ability to collect from that account once the New WEI Settlement is approved by the Alabama Bankruptcy Court.

45. Within five calendar days of the later of (i) entry of an order by the Alabama Bankruptcy Court approving the New WEI Settlement, or (ii) the Effective Date,

(1) the Debtors shall cause the IRS Escrowed Amount to be disbursed to the United States, and
(2) the IRS shall set off the Ditech Group Overpayments against the New WEI Settled Tax Liabilities. To the extent the automatic stay of section 362 of the Bankruptcy Code applicable in Debtors' bankruptcy cases would otherwise bar such setoff, the Court finds that cause pursuant to section 362(d) exists, and the stay is hereby modified to permit the IRS to effect such a setoff.

46. Upon the United States' receipt of the Debtors' Payment in full, as described above, the Debtors, the Ditech Group, the Released Parties, and the Related Parties shall be deemed fully and forever released and discharged from any and all civil liabilities or obligations arising out of or in connection with the New WEI Group Tax Liabilities by the United States (including the IRS) and Mueller Water or that were or could have been raised in the pending cases. Within ten calendar days of the United States' receipt of the Debtors' Payment in full, the IRS shall withdraw its Proof of Claim in Debtors' bankruptcy, Claim No. 24019. If the IRS fails to withdraw Claim No. 24019 within such time period, Claim No. 24019 shall be deemed withdrawn in its entirety with prejudice.

47. For the avoidance of doubt, nothing in Paragraphs 42 or 46 of this Order shall or shall be construed to impose any liability on the Buyers and Reorganized RMS on account of the New WEI Group Tax Liabilities or the New WEI Settled Tax Liabilities, including the Debtors' Payment.

48. For the avoidance of doubt, nothing in the Third Amended Plan, the Plan Supplement, this Order (including the findings of fact and conclusions of law set forth in Schedules 1 and 2 attached hereto and incorporated herein), the Asset Purchase Agreement (Forward Business), the Stock and Asset Purchase Agreement (Reverse Business), or the GUC Recovery Trust Agreement, including any amendments, supplements or modifications thereto,

shall discharge, release, extinguish, terminate, modify, impair or otherwise preclude the United States' right to offset any overpayments of tax of Ditech Holding Corporation and its subsidiaries (and any successors thereto), plus interest thereon, against New WEI Group's unpaid tax debts (to the extent such offset rights exist), as described further in the Internal Revenue Service's proof of claim and the United States' objection to confirmation. The Debtors, Wind Down Estates, GUC Recovery Trustee, and Plan Administrator retain the right to dispute any such asserted right of offset by the IRS, except with respect to the setoff of the Ditech Group Overpayments against the New WEI Settled Tax Liabilities, provided for in paragraphs 44 through 46 of this Order.

U.S. Trustee

49. For the avoidance of doubt, the discharge, release, and injunction provisions contained in the Third Amended Plan and this Order are not intended and shall not be construed to bar the United States Trustee Program from enforcing any liabilities relating to the conduct described in that certain Memorandum of Understanding between Ditech and the United States Trustee Program dated September 25, 2019. Nothing contained in this Order or the Third Amended Plan shall (1) release or exculpate any non-debtor, including any Released Parties and/or Exculpated Parties, from any liabilities to a Governmental Unit relating to the conduct addressed in the Memorandum of Understanding between Ditech and the United States Trustee Program, or (2) be construed to change, amend, or deem ineffective the terms of that Memorandum of Understanding.

Taxing Authorities

50. Holders of Allowed Priority and/or Secured Tax Claims ("**Tax Claims**") shall retain their tax liens to the same validity, extent, and priority as existed on the Commencement Date until all validly determined taxes and related interest, penalties, and fees

provisions of this Order, all amendments thereto, and any waivers and consents thereunder, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Acquired Assets and issuance of equity securities in Reorganized RMS, as applicable, to the Buyers; (b) interpret, implement, and enforce the provisions of this Order, the Asset Purchase Agreement, and the Stock and Asset Purchase Agreement; (c) protect the Buyers against any Interests against the Sellers or the Acquired Assets of any kind or nature whatsoever, and (d) enter any order under section 365 of the Bankruptcy Code.

Dated: September 26 , 2019
New York, New York

/s/ James L. Garrity, Jr.
THE HONORABLE JAMES L. GARRITY, JR.
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT E

PROPOSED ORDER

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

In re: NEW WEI, INC., <i>et al.</i> , ¹ Debtors	Chapter 7 Case No. 15-02741-TOM7 Jointly Administered
HILLSBOROUGH HOLDINGS CORP., Plaintiff, v. THE UNITED STATES OF AMERICA, Defendant	Adversary Proceeding No. 15-00127-TOM

**ORDER GRANTING THE MOTION FOR APPROVAL OF
THE SETTLEMENT AGREEMENT BETWEEN
THE CHAPTER 7 TRUSTEE AND THE UNITED STATES OF AMERICA
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: New WEI, Inc. (f/k/a Walter Energy, Inc.) (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); New WEI 7, Inc. (f/k/a J.W. Walter, Inc.) (0648); Jefferson Warrior Railroad Company, Inc. (3200); New WEI 2, LLC (f/k/a Jim Walter Homes, LLC) (4589); New WEI 13, Inc. (f/k/a Jim Walter Resources, Inc.) (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); New WEI 19, LLC (f/k/a Walter Black Warrior Basin LLC) (5973); New WEI 18, Inc. (f/k/a Walter Coke, Inc.) (9791); New WEI 22, LLC (f/k/a Walter Energy Holdings, LLC) (1596); New WEI 20, LLC (f/k/a Walter Exploration & Production LLC) (5786); New WEI 1, Inc. (f/k/a Walter Home Improvement, Inc.) (1633); New WEI 6 Company (f/k/a Walter Land Company) (7709); New WEI 16, Inc. (f/k/a Walter Minerals, Inc.) (9714); and New WEI 21, LLC (f/k/a Walter Natural Gas, LLC) (1198). The location of the Debtors' corporate headquarters is 2100 Southbridge Parkway, Suite 650, Birmingham, Alabama 35209.

Upon consideration of the motion (the “Motion”)² of Andre' M. Toffel, as Trustee for the Chapter 7 Debtor, New WEI, Inc., and on behalf of New WEI, as common parent and agent for its consolidated group and subsidiaries (together, the “New WEI Group” (formerly, the Walter Energy, Inc., Walter Industries, Inc., Hillsborough Holdings Corp., and Jim Walter Corporation consolidated group), for entry of an order, pursuant to section 105 of title 11 of the U.S. Code (the “Bankruptcy Code”) and Federal Rule of Bankruptcy Procedure 9019 (“Rule 9019”), approving the Settlement Agreement between the Trustee and the United States; and it appearing that this Court has jurisdiction to consider 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 a hearing having been held to consider the relief requested in the Motion; and upon the record of the hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors and all other parties in interest; and the legal and factual bases set forth in the Motion having established just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED that:

1. The Motion is GRANTED.
2. The Settlement Agreement attached to the Motion as Exhibit C and all of the terms therein are hereby APPROVED.
3. The Parties and Mueller are authorized and directed to perform their obligations under the Settlement Agreement.

² Unless otherwise noted herein, capitalized terms in this Order shall have the meanings ascribed to them in the Motion.

4. The United States is authorized and directed to take any and all actions necessary to ensure that the Ditech Payments are paid in accordance with the terms of the Ditech Confirmation Order.

5. As provided in the Settlement Agreement, upon the United States' receipt of the entire Settlement Amount, and consistent with the timing of the following events as set forth in the Settlement Agreement, (a) the Proofs of Claim filed in this case and the Ditech chapter 11 bankruptcy case shall be withdrawn with prejudice, (b) the Adversary Proceeding shall be dismissed with prejudice (in a form substantively consistent with Exhibit F attached to the Motion), (c) the Government's pending Motion to Enforce Settlement (Doc. 3166) shall be withdrawn with prejudice (in a form substantively consistent with Exhibit G attached to the Motion), and (d) New WEI and the New WEI Group, including but not limited to Mueller and Ditech, shall be deemed fully and forever released and discharged from any and all civil liabilities or obligations arising out of or in connection with the New WEI Group Tax Liabilities.

6. To the extent that there are any inconsistencies between this Order and the Settlement Agreement, the Settlement Agreement shall govern.

7. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, modification, interpretation, or enforcement of this Order.

Dated: _____, 2019

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT F

**JOINT STIPULATION OF DISMISSAL OF ADVERSARY PROCEEDING WITH
PREJUDCE**

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:)	Chapter 7
)	
NEW WEI, INC., ET AL.,)	Case No. 15-02741-TOM-7
)	
Debtors.)	Jointly Administered
)	
HILLSBOROUGH HOLDINGS CORP.,)	
)	
Plaintiff,)	
)	
v.)	Adv. Proc. No. 15-00127-TOM
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

**JOINT STIPULATION OF DISMISSAL
OF ADVERSARY PROCEEDING WITH PREJUDICE**

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, as incorporated by Rule 7041 of the Federal Rules of Bankruptcy Procedure, the plaintiff, Andre' M. Toffel, as Trustee for the Chapter 7 Debtor, New WEI, Inc., as common parent and agent of its consolidated group and subsidiaries (formerly, the Walter Energy, Inc., Walter Industries, Inc., Hillsborough Holdings Corp., and Jim Walter Corporation consolidated group), and the defendant, United States of America, by and through their respective undersigned counsel, jointly **AGREE** and **STIPULATE** that the above-captioned adversary proceeding shall be **DISMISSED WITH PREJUDICE**, with

each party bearing its own attorneys' fees and costs.

Respectfully submitted on this ____ day of November 2019.

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

Stephen B. Porterfield
Thomas B. Humphries

Counsel for Andre' M. Toffel, Trustee

OF COUNSEL:
SIROTE & PERMUTT, P.C.
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OF COUNSEL:

JAY E. TOWN
United States Attorney

EXHIBIT G

**JOINT STIPULATION OF THE WITHDRAWAL OF THE UNITED STATES' MOTION
TO ENFORCE SETTLEMENT (DOC. 3166) WITH PREJUDICE**

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:)	Chapter 7
)	
NEW WEI, INC., ET AL.,)	Case No. 15-02741-TOM-7
)	
<u>Debtors.</u>)	Jointly Administered

**JOINT STIPULATION OF THE WITHDRAWAL
OF THE UNITED STATES' MOTION
TO ENFORCE SETTLEMENT (DOC. 3166) WITH PREJUDICE**

By agreement of the parties, Andre' M. Toffel, as Trustee for the Chapter 7 Debtor, New WEI, Inc., as common parent and agent of its consolidated group and subsidiaries (formerly, Walter Energy, Inc., Walter Industries, Inc., Hillsborough Holdings Corp., and Jim Walter Corporation consolidated group), and the claimant, United States of America, by and through their respective undersigned counsel, jointly **AGREE** and **STIPULATE** to the United States' withdrawal of the pending Motion To Enforce Settlement, Enter Judgment and Lift Stay (Doc. 3166) **WITH PREJUDICE**, with each party bearing its own attorneys' fees and costs.

Respectfully submitted on this ____ day of November 2019.

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

Stephen B. Porterfield
Thomas B. Humphries

Counsel for Andre' M. Toffel, Trustee

OF COUNSEL:
SIROTE & PERMUTT, P.C.
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