

**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 EXPEDITED HEARING AS TO THE MOTION TO APPROVE
SETTLEMENT BETWEEN THE CHAPTER 7 TRUSTEE AND THE UNITED STATES
OF AMERICA PURSUANT TO BANKRUPTCY RULE 9019**

Andre M. Toffel, the Chapter 7 Trustee (the “**Trustee**”) for the above-captioned debtors (the “**Debtors**”), hereby moves for entry of an order shortening the applicable notice period for

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.



and scheduling an expedited hearing on 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* (AP Doc.² 207, the “9019 Motion”).³ More specifically, the Trustee asks this Court to set a hearing as to the 9019 Motion to be held on **November 18, 2019**. In support, the Trustee states the following:

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 predicates for the relief requested here are Section 105(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”) and Rules 2002 and 9006(c)(1) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

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.

² “AP Doc.” citations refer to the Adversary Proceeding (15-00127-TOM) docket, while “BK Doc.” citations relate to the main case (15-02741-TOM).

³ Unless otherwise noted, capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the 9019 Motion, filed contemporaneously herewith.

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. (BK 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. (Doc. 2893 (Order Granting Motion to Convert)). That same day, Andre M. Toffel was named interim Chapter 7 Trustee. (BK Doc. 2911).

8. On October 31, 2019, this Court enter an Order approving a proposed form notice prepared by the Trustee as to the forthcoming filing of the 9019 Motion and as to an upcoming hearing as to the motion. (AP Doc. 204).

9. On November 5, 2019, the Trustee filed the 9019 Motion. (AP Doc. 207). The 9019 Motion is incorporated here by reference. Also on November 5, 2019, the Trustee filed his *Notice of Hearing Regarding Proposed Settlement of Federal Income Tax Claims*—the notice previously approved by this Court. (AP Doc. 208).

REQUESTED RELIEF

10. The Trustee respectfully requests the entry of an order shortening the applicable notice period for the 9019 Motion so that it can be heard, considered, and ruled upon by this Court on November 18, 2019.

BASIS FOR RELIEF

11. Bankruptcy Rule 9006(c)(1) provides that the Court, for cause shown, may in its discretion with or without notice reduce the notice period normally required for motions.

12. Further, Section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” “The basic purpose of Section 105(a) is to assure the bankruptcy court’s power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 *Collier on Bankruptcy* ¶ 105.01 (16th ed. 2015). Thus, Section 105(a) essentially codifies the bankruptcy court’s inherent equitable powers. *See Mgmt. Tech. Corp. v. Pardo (In re Mgmt. Tech. Corp.)*, 56 B.R. 337, 339 (Bankr. D.N.J. 1985) (holding that a court’s equitable power is derived from Section 105).

13. The Trustee submits that good cause and compelling circumstances exist warranting shortened notice and expedited consideration of the 9019 Motion.

14. As more fully set forth in the 9019 Motion, the Settlement Agreement resolves litigation over a federal income tax dispute that has been ongoing since 1991. The taxes are alleged to be owed by the New WEI Group (a term defined in the 9019 Motion), which includes the Debtors. The United States of America has filed proofs of claim totaling in excess of \$860 million, including hundreds of millions of dollars in alleged priority tax claims. The Settlement Agreement will resolve those tax liabilities, and those proofs of claim – *all at no cost to the Debtors’ estates*. The amounts due under the Settlement Agreement will be paid in full by non-debtor parties. Accordingly, the Trustee believes that no creditor or party in interest in these Chapter 7 cases will be adversely impacted as a result of the proposed settlement.

15. The Settlement Agreement is the result of more than two years of negotiations between the Parties, which have been the subject of numerous status conferences before this Court. The central components of a settlement in principle were disclosed to the Court in February 2019. At no time during any of the preceding status conferences has any party expressed any opposition

to the settlement in principle. Warrior Met Coal has requested an opportunity to review the terms of the settlement in order to preserve its rights – but does not oppose the setting of a hearing on the 9019 Motion for November 18, 2019.

16. The Parties wish to gain approval of and to fulfill the Settlement Agreement as soon as possible since interest accrues daily on the amount of the tax liability agreed to in the Settlement Agreement.

17. In accordance, the Trustee submits that cause exists to shorten the applicable notice period and to schedule a hearing on the 9019 Motion on an expedited basis.

NOTICE

18. The Trustee will serve a copy of this Motion in accordance with the Court's Order Continuing and Amending the Limited Notice and Service Requirements Established in the Chapter 11 Cases. (BK Doc. 3063).

CONCLUSION

THEREFORE, the Trustee asks this to Court enter an order shortening the applicable notice period related to the 9019 Motion and setting the 9019 Motion to be heard, considered, and decided on November 18, 2019.

Respectfully submitted this 5th day of November 2019.

/s/ Stephen B. Porterfield

Stephen B. Porterfield

Thomas B. Humphries

Counsel for Andre M. Toffel, Trustee

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing all persons and entities that have filed a request for service of filings in this case pursuant to Bankruptcy Rule 2002.

Electronic notice, and via U.S. Mail where appropriate, will also be provided to the following:

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