

**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)

CHAPTER 7 TRUSTEE'S MOTION FOR APPROVAL OF PROPOSED SETTLEMENT

COMES NOW Andre M. Toffel (the "Trustee"), duly appointed interim Chapter 7 trustee of the bankruptcy estates of the Debtors¹ associated with this jointly administered case, and, pursuant to 11 U.S.C. 105(a) and Bankruptcy Rule 9019, asks this Court to enter an Order approving a compromise and settlement of claims between the Debtors' estates and Warrior Met Coal, Inc. ("Warrior Met"), the terms of which are embodied in the agreement (the "Settlement Agreement") attached here as Exhibit A. In support, the Trustee states the following:

STATUTORY PREDICATE AND JURISDICTION

1. This Motion is asserted pursuant to 11 U.S.C. § 105(a), as well as 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 Water Natural Gas, LLC) (1198). The location of the Debtors' corporate headquarters is 2100 Southbridge Parkway, Suite 650, Birmingham, Alabama 35209.



2. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 1334 and 157. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

3. The Debtors filed voluntary bankruptcy petitions under Chapter 11 of the Bankruptcy Code on July 15, 2015 (the “Petition Date”).

4. During the pendency of the 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. The Debtors’ so-called “Core Assets” were sold (the “Core Asset Sale”) to Warrior Met via the Warrior Met Coal APA, executed November 5, 2015, and pursuant to this Court’s Order approving the sale dated January 8, 2016. *See* Docs. 993 (Debtors’ Sale Motion); 1119 (Order Approving Auction and Bidding Procedures); 1584 (Core Asset Sale Order); 2235 (Warrior Met Coal APA).

5. The vast majority of the Debtors’ remaining assets, the “Non-Core Assets,” were sold (the “Non-Core Asset Sale”) in February, 2016 to Seminole Coal Resources, LLC; ERP Compliant Coke, LLC; and, ERP Environmental Fund, Inc. (collectively, “Seminole/ERP”) via the Seminole/ERP Agreement, and pursuant to this Court’s Order approving the sale dated February 8, 2016. *See* Docs. 993 (Debtors’ Sale Motion); 1119 (Order Approving Auction and Bidding Procedures); 1784 (Notice of Proposed Asset Purchase Agreement for the Debtors’ Non-Core Assets); 1863 (Non-Core Asset Sale Order). The sales of the Core and Non-Core Assets closed by March 31, 2016.

6. Following the 363 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 Chapter 7

cases. *See* Doc. 2849 (Chapter 11 Debtors’ Motion to Convert to Chapter 7). The Debtors’ Motion to Convert to Chapter 7 explained that, after the 363 sales, few remaining assets were available to be administered in Chapter 7 and specifically identified an approximate \$1.6 million in funds to be provided to a subsequent Chapter 7 trustee to accomplish such administration. *See* Doc. 2849, at ¶¶ 5 and 7.

7. In accordance, on February 21, 2017, an order (the “Conversion Order”) was entered converting each of the Debtors’ Chapter 11 cases to cases under Chapter 7 under the Bankruptcy Code. *See* Doc. 2893 (Order Granting Motion to Convert). That same day, Andre M. Toffel was named interim Chapter 7 Trustee. *See* Doc. 2911. The contemplated \$1.6 million, proceeds from a Wind Down Trust created in connection with the sale to Warrior Met for administration of any remaining Debtor assets and for the wind-down and liquidation of the remaining Debtor entities, actually totaled \$625,000 at the time the case was converted.

8. These jointly administered Chapter 7 cases have thousands of creditors and several hundred million dollars in claims. By contrast, at the time of conversion, the Trustee only held \$625,000 in unspoken-for assets. Based on an exhaustive review of outstanding priority claims, that amount is insufficient to satisfy any particular class of claims under the Bankruptcy Code’s priority scheme—including Chapter 7 administrative claims and Chapter 11 administrative claims. In accordance, the overarching purpose of the settlement proposed here is to compromise potential claims held by the Chapter 7 Debtors as to assets purchased by Warrior Met via the Core Asset Sale in exchange for an infusion of cash and a potential share of certain unliquidated assets.

THE SETTLEMENT

9. Based on an investigation of the facts and circumstances detailed above, it is the Trustee’s belief that the Debtors’ estates hold potential claims against certain assets purchased by

Warrior Met as part of the Core Asset Sale. Speaking generally, those assets include some measure of liquidated funds (cash held in certain Debtor bank accounts, unused professional retainers from the Chapter 11 cases, etc.) and potential distributions related to unliquidated assets (proceeds from a captive insurance company located in Bermuda (“Cardem”), proceeds from certain claims related to the BP Oil Spill, proceeds from potential litigation with the Coal Act Funds, and proceeds from the Walter Canada insolvency proceedings, etc.). The disputed assets are more specifically described in the attached Settlement Agreement. *See* Exhibit A.

10. However, due to the inherent uncertainty and expense of protracted litigation, the Trustee and Warrior Met have come to an agreement to resolve those potential claims. The following excerpt, which will be included in a Notice to Creditors to be served contemporaneously with the filing of this Motion, summarizes the terms and mechanics of the Settlement Agreement:

Upon conversion of these cases the Chapter 7 Trustee took possession of several bank accounts. Warrior Met makes a claim to substantial portions of the funds in said bank accounts based upon the Amended and Restated Asset Purchase Agreement dated March 31, 2016, and approved by the Bankruptcy Court. In addition, there are certain assets that were purchased by Warrior Met upon which the Trustee may also have an interest, and Warrior Met and the Trustee have agreed to work together to recover some of those assets. The settlement proposed includes the formation of a liquidating trust. All of the assets in the possession of the Trustee which Warrior Met contends it purchased will be transferred to the trust, and all future recoveries of assets by the Trustee to which Warrior Met claims an interest will be deposited into the trust. Once the liquidating trust is established, all cash due to Warrior Met pursuant to the settlement agreement shall be paid out to Warrior Met. The Trustee and Warrior Met have agreed that up to \$2,900,000, or the amount necessary to make a substantial distribution on all 503(b)(9) claims and those with a higher priority, plus potentially more if certain recoveries are successful, of said trust assets will be used to pay the administrative and priority claims of the liquidating trust and these bankruptcy estates.

The Trustee of these estates will also be the sole trustee of the liquidating trust formed as described above. The Trustee will be compensated by the trust pursuant to the calculations prescribed by 11 U.S.C. § 326. All monies paid into and out of the trust will be subject to said calculation. Based upon the estimated range of recoveries by the Trustee and Warrior Met, the anticipated compensation to the Trustee, from both the liquidating trust and these bankruptcy estates, will likely be

in a range between \$275,000 and \$425,000. This amount is exclusive of compensation paid to professionals employed by the Trustee.

11. If this Motion is granted and the Settlement Agreement is approved, the Trustee and Warrior Met believe that the liquidating trust mentioned above can be established within a few days of this Court's Order approving the settlement becoming final. The liquidating trust will be created via a separate agreement between the Trustee and Warrior Met; however, in the event of any conflict between the agreement creating the liquidating trust and the Settlement Agreement, the Parties to the liquidating trust agreement stipulate that the terms of the Settlement Agreement control.

RELIEF REQUESTED AND BASIS FOR RELIEF

12. Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. 105(a), the Trustee asks this Court approve the Settlement Agreement.

13. Rule 9019 empowers a bankruptcy trustee to motion a court to approve a compromise or settlement. *See* Fed. R. Bankr. P. 9019(a). The Rule, in turn, vests the motioned court with the power to approve the proffered compromise or settlement. *See id.*; *In re Aloha Racing Foundation, Inc.*, 257 B.R. 83, 88 (Bankr. N.D. Ala. 2000). That power is discretionary, and is exercised with the best interest of a debtor's estate in mind. *See In re Marvel Entertainment Group, Inc.*, 222 B.R. 243, 249 (D. Del. 1998); *Vaughn v. The Drexel Burnham Lambert Group, Inc. (In re The Drexel Burnham Lambert Group, Inc.)*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). "As a general matter, '[s]ettlements and compromises are favored in bankruptcy as they minimize costly litigation and further parties' interests in expediting the administration of the bankruptcy estate.'" *In re Residential Capital, LLC*, 497 B.R. 720, 749 (Bankr. S.D.N.Y. 2013).

14. A court's charge under Rule 9019 is to determine whether a proposed compromise is fair and equitable under the circumstances of a particular case. *See Aloha Racing Foundation,*

257 B.R. at 87; *In re Residential Capital, LLC*, 497 B.R. at 749 (“A court must determine that a settlement under Bankruptcy Rule 9019 is fair, equitable, and in the best interests of the estate before approving it.”). In satisfying that responsibility, courts in the Eleventh Circuit follow the pronouncements detailed in *Wallis v. Justice Oaks, II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1549 (11th Cir. 1990), *cert. denied*, 498 U.S. 959 (1990). There, the court listed four factors to be considered in approving a settlement:

(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.

See also In re Chira, 567 F.3d 1307, 1312 (11th Cir. 2009) (reiterating the *Justice Oaks*’ factors).

15. Given the circumstances of this case, the proposed settlement is fair and equitable. While the Trustee believes that the Debtors’ estates have potential claims against the disputed assets which could serve to augment the Estate, any recovery via litigation of those potential claims is far from guaranteed. *See In re Residential Capital, LLC*, 497 B.R. at 740 (“If the parties were forced to litigated the FGIC Claims, the outcome would be uncertain because there are complex and novel issues involved, and the litigation would be costly and protracted.”). Moreover, the costs of litigation would likely be substantial, and without the funds contemplated by the proposed settlement, the Debtors’ estates lacks the cash to fund such a fight. *See In re Eurogas, Inc.*, 560 B.R. 574, 583 (Bankr. D. Utah 2016) (as part of weighing the probability of success factor, and concluding that such a factor weighed in favor of approving the settlement, stating that “[t]he bankruptcy estate has no assets with which to pursue costly litigation”). All things considered, the Trustee submits that “it is prudent to eliminate the risks of litigation to achieve specific certainty” in these cases. *See Aloha Racing Foundation*, 257 B.R. at 87 (quoting *In re Golden Mane Acquisitions, Inc.*, 221 B.R. 963, 966 (Bankr. N.D. Ala. 1997)).

16. In addition, the distributions to the Debtors' estates contemplated by the Settlement Agreement represent a substantial boon to an otherwise administratively insolvent situation. If the Settlement Agreement is approved, the Trustee's best judgement is that all allowed Chapter 7 administrative claims will be paid, all allowed Chapter 11 administrative claims will be satisfied, and a distribution to 11 U.S.C. § 503(b)(9) claimants will be made. Without the disbursements made the subject of the Settlement Agreement, the Trustee only hopes to be able to pay the Chapter 7 administrative claims. Simply stated, without the settlement with Warrior Met, no meaningful distribution to creditors will occur in these cases. The Trustee submits that the proposed settlement is fair and equitable, and, more importantly, in the best interest of the Estate. *See Eurogas, Inc.*, 560 B.R. at 584 (finding an infusion of cash which increased distributions to creditors to be in the best interest of the creditors in evaluating whether to approve a proposed settlement); *In re NJ Affordable Homes Corp.*, 2007 WL 2713046 (Bankr. D.N.J. 2007) (in considering whether to approve a proposed settlement, considering favorably that the settlement would result in \$2,680,000 into the bankruptcy estate for the benefit of creditors).

NOTICE

17. This Motion will be filed and served in accordance with this Court's Order Continuing and Amending the Limited Notice and Service Requirements Established in the Chapter 11 Cases, Doc. 3063. In addition, a Notice to Creditors (1) detailing the salient terms of the Settlement Agreement, (2) describing its ultimate impact on the Debtors' estates and any potential distributions, (3) detailing the hearing date and time as to this Motion, along with a deadline to file any objections to the proposed compromise, and (4) providing directions for accessing the full settlement documents, will be filed contemporaneously with this Motion and served via KCC on all parties-in-interests and claim holders.

THEREFORE, the Trustee asks this Court to approve the compromise and settlement made the subject of this Motion, and attached here as Exhibit A, pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 105(a).

Dated: October 13, 2017

/s/ Stephen B. Porterfield
Stephen B. Porterfield
Thomas B. Humphries
Attorneys for Andre M. Toffel, Trustee

OF COUNSEL:
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CERTIFICATE OF SERVICE

I hereby certify that on this the 13th day of October, 2017, 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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/s/ Stephen B. Porterfield
OF COUNSEL

Exhibit A

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered into this 13th day of October, 2017, by and between **Andre' M. Toffel, solely in his capacity as the Chapter 7 Trustee of the estates of New WEI, Inc.,¹ et al.** (the "Trustee"), and **Warrior Met Coal, Inc.** (as successor to Coal Acquisition, LLC) ("Warrior"). The Trustee and Warrior are collectively referred to herein as the "Parties." The Trustee and Warrior mutually desire to enter into this Settlement Agreement to resolve all disputes and claims between the Parties related to certain assets listed and described herein.

RECITALS

WHEREAS, on or about July 15, 2015, Walter Energy, Inc. and many of its subsidiaries filed Chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the Northern District of Alabama, Southern Division, (collectively, all the debtor entities that filed Chapter 11 bankruptcies are referred to herein as "Walter Energy"), which cases were consolidated for administrative purposes; and

WHEREAS, Walter Energy's bankruptcy filings created bankruptcy estates (collectively, the "WEI Estates"); and

¹ The Debtors (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 was 2100 Southbridge Parkway, Suite 650, Birmingham, Alabama 35209.

WHEREAS, on January 8, 2016, the Bankruptcy Court granted Walter Energy's Section 363 motion to sell substantially all of its real and personal property assets in multiple lots through a public auction process (Docket #1584); and

WHEREAS, Warrior acquired certain assets pursuant to an Amended and Restated Asset Purchase Agreement dated March 31, 2016 [Doc. No. 2235] (the "Acquired Assets")²; and

WHEREAS, the sale from Walter Energy to Warrior closed on or about March 31, 2016, thereby vesting title to the Acquired Assets in Warrior; and

WHEREAS, substantially all of Walter Energy's other assets were purchased by an unrelated company now known as "Mission"; and

WHEREAS, the sale from Walter Energy to Mission closed before the sale to Warrior, thereby creating the "Mission Assets"; and

WHEREAS, as a part of the Section 363 sale to Warrior, Warrior funded the "Wind Down Trust" which was designed to be used to wind down the bankruptcy cases following the sales to Warrior and Mission; and

WHEREAS, the WEI Estates were converted to Chapter 7 on or about February 21, 2017 (the "Conversion Date") and

WHEREAS, Toffel was duly appointed Chapter 7 Trustee for all of the WEI Estates on or about the Conversion Date; and

WHEREAS, the Acquired Assets include numerous items that were included in the lots that Warrior purchased at the auction, including but not limited to cash, cash proceeds, refunds, returns of deposits, retainers, and overpayments, distributions from other liquidation proceedings, commercial tort claims, and accounts receivable, subject to certain limited exceptions; and

² Capitalized words used herein which remain undefined shall have the same meaning ascribed to them in the Warrior APA [Doc. No. 2235].

WHEREAS, the Acquired Assets do not include any assets that are supposed to be included in the Wind Down Trust established for the benefit of the WEI Estates, which total approximately \$625,000 and are included in the bank accounts that the Trustee took possession of soon after the Conversion Date, and which may be partially reduced in amount as of the execution of this agreement due to bank fees and court-approved payments made by the Trustee (the "Wind Down Trust Funds"); and

WHEREAS, Warrior maintains that each and all of the assets (or their proceeds) described in this Agreement (other than the Wind Down Trust and the Mission Assets) are Acquired Assets which belong exclusively to Warrior; and

WHEREAS, the Trustee maintains that the WEI Estates have an interest in at least some of the Acquired Assets; and

WHEREAS, Warrior and the Trustee each maintain that collectively they hold exclusive right and title to all cash presently in bank accounts controlled by the Trustee; and

WHEREAS, the Acquired Assets include without limitation the following specific assets: (1) monies in bank accounts on the conversion date as more particularly described below (the "Bank Funds"); (2) other monies in bank accounts known as the "Silverscript Funds," (3) unused portion of retainers of certain Professionals employed by the WEI Estates in the Chapter 11 proceedings (the "Returned Retainers"); (4) certain portions of the BP claims (the "BP Proceeds"); (5) proceeds from an alleged overdraw by the Trustees of the Coal Act Funds on a letter of credit that secured certain of Walter Energy's obligations (the "Coal Plans Overdraw"); (6) proceeds from the liquidation of Walter Energy's captive insurance company Cardem Insurance Company domiciled in Bermuda ("Cardem" and the "Cardem Proceeds"); (7) the so called "Scotiabank Proceeds"; and (8) claims and proceeds of claims being litigated in the insolvency proceedings of the Canadian affiliates of Walter Energy ("Walter-Canada"); and

WHEREAS, the Parties hereto believe it unlikely that the WEI Estates or the Liquidating Trust will incur any substantial tax liability as a result of transaction occurring during and in the Walter-Canada bankruptcy proceedings, but that nonetheless remains a possibility; and

WHEREAS, some of these assets are in the possession of the Trustee and others are not presently in the Trustee's possession; and

WHEREAS, on or about the Conversion Date, the Trustee took possession of the following cash in the following named bank accounts of WEI held at Regions Bank and transferred the cash to newly opened Trustee accounts at Union Bank:

- Walter Energy, Inc. [Account 2038] - **\$1,903,811.26**. This account contains the Silverscript Funds of \$1,278,899.02 and the remaining balance of \$624,912.24 of the Wind Down Trust Funds;
- Walters Resources Payroll [Account 5682] - **\$164,934.20**.
- JWR-Workman's Comp [Old Account *1275 - New Account 2061] **\$40,999.85**.
- Walter Minerals Operating [Old Account *1348 - New Account 2053] **\$5,992.49**.
- Jim Walter Resources, Inc. [Old Account *9652] **\$312,155.64**.
- Tuscaloosa Resources, Inc. [Old Account *9660] **\$20,000.00**.
- Walter Black Warrior Basin [Old Account *9679 - New Account 2079] **\$1,068,993.48**.
- Walter Energy Accounts Payable [Old Account *9695] - **\$79,920.51**.

For clarity, the term "Bank Funds" does *not* include the Wind Down Trust Funds or the Silverscript Funds, which therefore makes the total Bank Funds having a balance of \$1,692,996.17 less continuing bank fees from Union Bank.

WHEREAS, the amount of most of the types of Proceeds stated herein is approximate and may or may not result in any recovery by Warrior or the WEI Estates; and

WHEREAS, the Returned Retainers total \$1,058,256, all of which is in the possession of the Trustee; and

WHEREAS, Cardem will be liquidated in Bermuda pursuant to the laws of Bermuda; and

WHEREAS, at least one of the board positions at Cardem is vacant, including the position that Walter had the right to appoint, which board member the Chapter 7 Trustee has the right and duty to appoint; and

WHEREAS, the liquidation of Cardem in the Bermuda insolvency proceedings will require substantial effort to complete; and

WHEREAS, the liquidation of Cardem is anticipated to generate substantial assets, which the Parties are presently informed could total up to \$3.5 million, but this amount could vary outside of that range; and

WHEREAS, the Parties anticipate receiving the return of the Scotiabank Proceeds related to prepaid credit cards in the amount of \$270,240.74 from either KPMG or Scotiabank; and

WHEREAS, included in the bank accounts is an amount of \$1,278,899.02 of the Silverscript Funds which were paid by the WEI Estates by check to Warrior before the Conversion Date, but which check was never deposited prior to the Conversion Date; and

WHEREAS, the Parties seek to recover approximately \$4.25 million in cash and cash proceeds (plus additional recoveries in excess of the base amount) that constitute the Coal Plans Overdraw, but likely only after further contested legal proceedings against the Coal Act Plans (with the Mission Assets possibly including a separate and distinct overdraw claim of approximately \$250,000 against the Coal Act Plans (the "Mission Coal Plans Claim")); and

WHEREAS, the WEI Estates filed three claims against BP, related to damages suffered as a result of the *Deep Water Horizon* oil spill which occurred in the Gulf of Mexico on or about April 20, 2010, at least one of which claims in the approximate amount of \$2.2 million is included in the Acquired Assets; and

WHEREAS, Warrior has asserted in its own name as the owner of various claims in the Canadian insolvency proceedings of Canadian affiliates of Walter Energy ("Walter-Canada"), which contested proceedings could result in Warrior recovering many millions of dollars from Walter-Canada;

WHEREAS, during the pendency of the Chapter 11 cases post-sale but before the Conversion Date, due to a scrivener's error, a tax payment of approximately \$25,000 due from the WEI Estates to the Alabama Department of Revenue was not paid, the payment of which tax benefits Warrior (the "One Time Alabama Tax"); and

WHEREAS, there are substantial Section 503(b)(9) priority claims filed against the estates by pre-petition suppliers of Walter Energy in the approximate amount of \$3.1 million (the "Supplier Claims"); and

WHEREAS, it is anticipated that there will be substantial professional Section 503(b)(1) claims incurred and filed against the WEI Estates that arise during the Chapter 7 proceedings, which are anticipated to be several hundred thousand dollars (the "Professional Claims"); and

WHEREAS, the Coal Plans have filed an Application for the Allowance of Administrative Expenses (Doc. 2988) in the approximate amount of \$3.8 million (the "Coal Plan Administrative Claim"), to which claim the Parties hereto object in its entirety; and

WHEREAS, Warrior has filed two administrative expense claims (Doc. 2985 & 2986) in the approximate amount of \$3.4 million (the "Warrior Administrative Claims"), both of which claims would be fully resolved by the approval of this settlement; and

WHEREAS, there are substantial other administrative claims filed against the WEI Estates that total approximately \$1.0 million arising from the Chapter 11 proceedings (the "Other Administrative Claims"); and

WHEREAS, there are pending objections to the allowance of at least one of the administrative claims, and also to its amount; and

WHEREAS, the Chapter 7 Trustee enters into this Agreement in an attempt to obtain sufficient funds to pay all allowed administrative claims, all allowed Professional Claims, and to make a substantial distribution, and perhaps payment in full, to all allowed Section 503(b)(9) priority claims ("Supplier Claims"); and

WHEREAS, it is extremely unlikely that there will be any distributions to general unsecured creditors; and

WHEREAS, the Parties seek the reasonable, but speedy, resolution of their respective claims and the claims of others and distribution of the remaining assets described herein, and to that end, will seek to handle these matters promptly, with the goal of closing all of the main bankruptcy cases by not later than the end of 2018; and

WHEREAS, the collection and liquidation of some of the assets might take several years (particularly the Coal Plans Overdraw);

WHEREAS, the Parties have determined that in the interests of the prompt closing of the WEI Estates and avoiding accruing substantial bank and other charges incurred by the WEI Estates, it is appropriate and beneficial to establish a liquidating trust to oversee and distribute the assets that Warrior is sharing pursuant to this Agreement, some of which are in the possession of the Trustee (the "Liquidating Trust");

WHEREAS, it is the Parties intention that Warrior will form, establish and fund the Liquidating Trust pursuant to Alabama law, and that the Trustee will be named as trustee of the Liquidating Trust; any and all transfers into or distributions from the Liquidating Trust shall be in accordance with the terms of this Agreement;

WHEREAS, the Liquidating Trust will be required to file a tax return after its creation, and the Liquidating Trust may have taxable income, though the Parties believe at this time that it will be minimal; any such tax liability shall be paid out of the Liquidating Trust funds as first-level administrative expenses;

WHEREAS, notwithstanding the creation of the Liquidating Trust, the Bankruptcy Court would retain jurisdiction over most everything, and its primary roles would be resolving all objections to claims, particularly the

Coal Plan Administrative Claim and the Supplier Claims, and also adversary proceedings regarding some of the assets;

WHEREAS, each of the Parties could assert contested legal positions that would entitle either of them to more of the assets and the cash proceeds than it would receive under this Agreement, and, therefore, each of the Parties could receive less than it is receiving under this Agreement if it was required to fully litigate these disputes; and

WHEREAS, the Parties hereto desire to resolve, settle and compromise their disputes upon the terms and conditions set forth here without resort to further litigation or incurring further costs or expenses and have reached an agreed resolution of their various interests with regard to these assets, and any other assets that might come to the estate, subject to the approval of the Bankruptcy Court, as outlined herein.

NOW, THEREFORE, subject to Bankruptcy Court approval, it is hereby agreed as follows:

AGREEMENT

This Agreement is entered into because the Trustee and Warrior have each concluded that it is in the best interest of each of the two Parties to enter into the Agreement on the terms set forth herein. In consideration of the recitals and covenants contained in this Agreement, and for other good and valuable consideration, the Parties agree as follows:

1. **Confirmation of Recitals.** For purposes of settlement the Parties acknowledge and agree that the recitals are true and correct to the best of their respective understanding and belief, recognizing that many of the recitals are forward looking statements that depend upon events often outside of the control of the Parties from which proceeds might be realized.

2. **Unified Settlement.** This Agreement represents a unified settlement between the Parties. Any percentage recovery in favor of the Trustee in any specific category of assets does not mean that such percentage standing alone for that category of assets would be a reasonable settlement. Stated differently, the Settlement is based on an overall arms-length, negotiated, fair agreement between the Parties,

subject to Bankruptcy Court approval. The appropriateness of this Settlement must be determined by a review of the settlement in its entirety.

3. **Effect on Counterparties.** Nothing in this Agreement shall constitute a determination of any issue related to any claims or defenses that Walter Energy, the WEI Estates, or Warrior on the one hand has against any of the counterparties on the other hand (and vice versa) with respect to the BP Claims, the Coal Plans Overdraw, the Scotiabank Claim, the Cardem Proceeds, and Walter-Canada.

4. **Bankruptcy Court Approval Required.** Each of the Parties is entering into this Agreement as a compromise of its respective positions. In the event the Agreement is not approved by the Bankruptcy Court, neither of the Parties shall be bound in any way by any recital or statement made herein, nor by the terms hereof.

5. **Liquidating Trust.** Warrior shall promptly form a Liquidating Trust for the purposes set forth herein, with the sole trustee of the Liquidating Trust being Andre' M. Toffel. The provisions of the Liquidating Trust shall be substantially in accord with the terms of the Settlement Agreement. The Parties may by written agreement elect not to use a liquidating trust if they determine collectively in their reasonable discretion that use of the liquidating trust would substantially diminish distributions to priority creditors of the WEI Estates. In such event, the provisions hereof applicable to the Liquidating Trust would be equally applicable to the WEI Estates.

6. **Agreed Upon Transfers of Certain Assets.** Each of the Parties agrees to the following sharing of certain assets, some of which are in the Trustee's possession, and some are not, and some are yet to be liquidated:

- The Wind Down Trust Funds shall remain in the WEI Estates.
- The Trustee shall transfer possession of the Silverscript Funds to the Liquidating Trust, which shall immediately pay 100% of them to Warrior, net of any bank charges incurred prior to the transfer.

- The Trustee shall transfer possession of the Bank Funds, net of any bank charges incurred prior to the transfer, to the Liquidating Trust, which shall immediately pay 60% of them to Warrior.
- The Trustee shall transfer possession of the Returned Retainers, net of any bank charges incurred prior to the transfer, to the Liquidating Trust, to be distributed as set forth below in the next paragraph.
- Warrior shall pursue recovery of the Scotiabank proceeds, which upon recovery shall be transferred to the Liquidating Trust, from which the Trust shall promptly pay 90% of gross amount of the Scotiabank Proceeds to Warrior.
- Warrior shall pursue recovery of the BP Proceeds, which upon recovery shall be transferred to the Liquidating Trust, from which the Liquidating Trust shall immediately pay 90% of the gross amount to Warrior, but only after a determination of the portion of the BP Proceeds that are a part of the Acquired Assets and not a part of the Mission Assets.
- All transfers of assets from the Parties which are required to be made by this Agreement to the Liquidating Trust, may be transferred directly or indirectly, as the Parties may agree in writing, to the Liquidating Trust; provided, however in all such events, control of all assets to be transferred shall at all times be in either one of the Parties hereto or the Liquidating Trustee.

7. **Distributions from the Liquidating Trust.** The Trustee in his role as trustee of the Liquidating Trust (the "Liquidating Trustee") shall from time to time distribute the remaining cash assets in the Liquidating Trust with the following priority as follows:

(a) first, to pay to Warrior any assets it receives that are allocated to Warrior in this Agreement or that otherwise belong to Warrior;

(b) second, (i) to pay the reasonable administrative costs, including income tax of the Liquidating Trust, if any, and expenses of the Liquidating

Trust and of the Chapter 7 proceedings including the fees and expenses of all professionals thereof, including those arising from any attempt to liquidate, collect, and recover any of the assets described herein, and (ii) to pay the Liquidating Trustee an amount equal to the compensation stated in 11 U.S.C. § 326(a) as to all distributions made by the Liquidating Trustee and without regard to whom those distributions are made, plus all necessary and reasonable expenses. For the avoidance of doubt, (i) the Walter-Canada claims are never due to become assets of the Liquidating Trust and therefore shall not be included in this calculation; and (ii) to the extent the Trustee is paid his statutory fees from the WEI Estates based on a percentage of the administered assets, those assets for which are included in the amount of compensation the Trustee receives in the bankruptcy proceeding pay shall not be included in the calculation of the fees due the Liquidating Trustee.

(c) third, to all unpaid allowed, administrative priority claims arising from the Chapter 11 proceedings.

(d) fourth, all priority claims that have a higher statutory priority than the Supplier Claims.

(e) fifth, pro rata distributions on the Supplier Claims that are allowed by the proceedings in the Bankruptcy Court.

(f) sixth, if any further proceeds remain, pro rata distributions on the priority claims that are allowed by the Bankruptcy Court.

The Liquidating Trustee must pay each category of assets in full before making any distributions to any lower category, except that the Liquidating Trustee may distribute assets to the next lower category and so on before the superior categories are paid in full, provided both (i) all then liquidated amounts in the higher categories have been paid; and (ii) the Liquidating Trustee in his reasonable discretion determines that there will in time be enough assets in the Liquidating Trust to pay the higher category claims in full. All proceeds shall be distributed without regard to the particular WEI Estate in which a claim arose.

8. Liquidation of Cardem. Cardem, the WEI Estates, and Warrior share a common interest in the liquidation of Cardem. The Trustee shall appoint a board member to fill one vacant seat on Cardem's board

that previously was due to be appointed by Walter, with such appointment subject to the written approval of each of Warrior and the Bankruptcy Administrator, whose consent shall not be unreasonably withheld (the "New Member"). The New Member will use reasonable measures to attempt to cause Cardem to retain and engage a firm recommended by Warrior (together with any additions or replacements, the "Cardem Professionals") to participate in the orderly wind down and liquidation of Cardem, subject to usual oversight by the Cardem board. If Cardem later considers appointing additional or replacement Cardem Professionals, the New Member shall seek advice from the Trustee and Warrior concerning the selection of new Cardem Professionals. The Trustee and the Cardem Professionals shall keep counsel for Warrior regularly informed of the status and progress of the orderly liquidation of Cardem. Fees and expenses of the Cardem Professionals' and the New Member shall be paid exclusively from the Cardem assets in accord with applicable Bermuda law. These fees and expenses shall not be subject to the approval of the Bankruptcy Court, but the amount of these fees and expenses shall be shared with counsel for the Trustee, Warrior, and the Bankruptcy Administrator. Cardem (or its Liquidator appointed pursuant to Bermuda law) shall transfer from time to time any prepaid insurance premiums and all of the net proceeds it liquidates to the Liquidating Trust, subject to the requirements of Bermuda law. Promptly upon receipt of such proceeds, the Liquidating Trustee shall pay 75% of the amount of the proceeds it receives to Warrior. Nothing herein shall limit or deprive the New Member of maintaining full compliance of his or her fiduciary obligations to Cardem.

9. **Coal Plans Overdraw.** Warrior shall pursue recovery, liquidation, and payment of the Coal Plans Overdraw, with the Trustee of the WEI Estates participating, if appropriate, as co-plaintiffs in any litigation. If the Trustee deems it advisable, he may retain Warrior's counsel (in addition to his primary counsel) to pursue recovery of the Coal Plans Overdraw, but the cost of such counsel shall be borne by Warrior. Except as otherwise stated herein, each of the Parties shall bear its own costs and fees in pursuing the Coal Plans Overdraw. If and when the Coal Plans Overdraw is liquidated, all of the gross proceeds shall be transferred into the Liquidating Trust. The Liquidating Trustee shall promptly pay 90% of these proceeds to Warrior.

10. **Walter-Canada.** Warrior shall pursue recovery of all the claims against Walter-Canada. Warrior shall retain 100% of the Walter-Canada

claim and proceeds and neither the Liquidating Trust or the WEI Estates shall recover anything directly or indirectly from Walter-Canada. For the avoidance of doubt, neither the Liquidating Trust nor the WEI Estates have any claims against Walter-Canada nor shall they share in any of the proceeds, which shall belong exclusively to Warrior.

11. **Other Acquired Assets.** The Parties anticipate other Acquired Assets and proceeds might be found (collectively, the "Other Assets"). To the extent that any of the Other Assets come into possession of the Liquidating Trustee, he shall transfer them to the Liquidating Trust, which shall distribute 90% of them to Warrior. To the extent that Warrior becomes in possession of the Other Assets, it shall pay them into the Liquidating Trust. The Liquidating Trustee shall promptly pay 90% of these proceeds to Warrior. These Other Assets do not include any assets already titled in, or in the possession or control of Warrior, which assets Warrior shall retain. The Parties hereto may hereafter by mutual consent in writing transfer or include any Acquired Assets or other assets into the Liquidating Trust not presently included in the Liquidating Trust. In such cases, unless otherwise agreed in writing, the Trustee shall retain 5% of these assets and promptly pay 95% of these assets to Warrior.

12. **Minimum and Maximum of the Liquidating Trust's Share of these Assets.** Notwithstanding the other provisions hereof regarding the division of the assets among the Parties and the Liquidating Trust, but subject to the last sentence of this paragraph, the Trustee shall be entitled to retain for the benefit of the Liquidating Trust a minimum of \$2.4 million and a maximum of the lesser of (i) the amount necessary to pay all allowed Supplier Claims in full and all priority claims with a priority greater than Supplier Claims in full; and (ii) \$2.9 million. The calculation of both the minimum and maximum amounts shall not include the amount in the Wind Down Trust. Provided, however, that despite this cap, if, and when, the Liquidating Trust has received \$2.9 million, then the Liquidating Trust shall be entitled to 5% of any additional proceeds of the Coal Plans Overdraw and 10% of any additional proceeds from Cardem's liquidation. Moreover, Warrior shall indemnify the WEI Estates and the Liquidating Trust from all federal income tax liability that either of them incur which arises during the pendency of the Chapter 7 proceedings as a result of transfers or distributions into the WEI Estates or the Liquidating Trust, but only to the extent such transfers or distributions are ultimately for the benefit of Warrior. This indemnity obligation shall not be subject to the minimum and

maximum provisions of this paragraph. In the unlikely event that *transactions* or *proceedings* (which have occurred in the Walter Canada bankruptcy proceedings) themselves create actual tax liability for the WEI Estates or the Liquidating Trust, the Parties hereto will then meet and confer in an attempt to resolve this one liability issue. If necessary, the resolution of this issue may by written agreement of the Parties change other terms of the then previously approved Settlement Agreement, with such substantive changes subject to the later approval of the Bankruptcy Court if any creditors are negatively affected by any substantial change.

13. **Decision Making.** The Trustee and Warrior shall consult with each other regarding litigation and negotiation strategy regarding pursuit of any claims against others (such as the BP Claims, the Coal Plans Overdraw, and the like). The decision on what strategy to use, how to proceed, and terms of the settlement shall be made by the party that is entitled to the higher percentage share of the recovery for that asset, but only after consultation with the other party.

14. **Continuing Duty to Turnover.** To the extent that the WEI Estates receive any assets not described herein which are included within the Acquired Assets pursuant to the Warrior APA, the Trustee agrees to immediately distribute those assets and their proceeds to Warrior.

15. **Payment of the One Time Alabama Tax.** Promptly after any Order approving this Settlement Agreement becomes final (and not subject to any appeal or further review), before distributing the assets in his possession to the Liquidating Trust, the Trustee shall pay, from the Wind Down Trust proceeds in his possession, the One Time Alabama Tax to the Alabama Department of Revenue.

16. **Timely Transfer of Possession of Assets.** Unless otherwise specifically provided herein, the Trustee shall distribute all monies and assets in his possession that are due and owing to the Liquidating Trust or to Warrior no later than promptly after any time for appeal of the approval of this Agreement has run (either without appeal or after any appeals having been resolved). To the extent that the Trustee obtains funds or other assets after that date has passed, the Trustee shall promptly transfer them to the Liquidating Trust or Warrior, as their interests then appear.

17. **Duty to Use Best Efforts to Collect Assets.** Each of the Parties agrees to take all appropriate and necessary steps to collect any cash and cash proceeds related to the assets described herein, even if the efforts benefit only the other party. Likewise, either or both of the Parties shall take all appropriate and necessary steps to pursue legitimate objections to claims that have a priority equal or superior to Supplier Claims.

18. **Warrior's Reservation of Rights Regarding Substantive Consolidation.** Warrior specifically reserves the right to (but is not required to) object to any motion filed by the Trustee seeking to substantively consolidate the WEI Estates.

19. **Resolution of Warrior's Admin Claims.** If and when this Agreement is approved by the Bankruptcy Court, the administrative priority claims filed by Warrior against the WEI Estates [**Doc. No. 2985 and 2986**] shall be deemed allowed and satisfied through this Settlement.

20. **Trustee's Fiduciary Obligations.** Nothing herein shall deprive the Trustee of either the WEI Estates or the Liquidating Trustee from fully complying with his fiduciary obligations. If complying with these duties ever requires the Trustee to violate a substantive provision of this Agreement, the Trustee shall so inform Warrior, in which case the Parties will meet and confer to resolve the issue. If no resolution is reached, Warrior has the right to rescind the Agreement.

21. **Closing of the WEI Estates.** Upon the closing of any and all of the WEI Estates, the Trustee shall distribute any and all remaining assets to the Liquidating Trust. To the extent that the Trustee is authorized or directed herein to pursue certain matters, upon the closing of the WEI Estates, such obligations shall become the obligations of the Liquidating Trustee. The Bankruptcy Court shall retain jurisdiction to hear all disputes regarding the WEI Estates and also the Liquidating Trust.

22. **Existing Liens.** All of the Acquired Assets were sold to Warrior free and clear of all liens, claims, interests, and encumbrances. For the avoidance of doubt, this Agreement eliminates any and all liens on the assets that are to be transferred to the Liquidating Trust pursuant to the provisions hereof.

23. **Employment and Payment of Professionals.** The Liquidating Trust is permitted and entitled to retain all professionals presently and hereafter retained by the WEI Estates on the same terms and conditions as they have with the WEI Estates. These professionals of the Liquidating Trusts and the WEI Estates shall file Fee Applications with the Bankruptcy Court for all of their work and expenses for either the WEI Estates or the Liquidating Trust, without the need to differentiate between them. Prior to the creation of the Liquidating Trust and the Court's approval of this Agreement, retained professionals shall receive court-approved compensation from the proceeds of the Wind Down Trust, which are currently in the possession of the Trustee. Once this Agreement is approved by the Court and the Liquidating Trust is created, all approved amounts shall be paid via the Wind Down Trust proceeds, subject to court approval, until those proceeds are exhausted, and thereafter, from the Liquidating Trust. After the Wind Down Trust funds have been transferred to the Liquidating Trust or are exhausted, professionals shall no longer need to file fee applications for work and expenses incurred in the calendar quarter immediately preceding the quarter in which the WEI Estates are closed. At all times following the creation of the Liquidating Trust and the transfer or exhaustion of the Wind Down Trust funds, the Liquidating Trustee may pay from the assets of the Liquidating Trust 100% of fees and 100% of expenses of professionals when billed monthly, subject to disgorgement based on the orders of the Bankruptcy Court. Except as otherwise expressly provided herein, each party is responsible for its respective attorneys' fees, costs, and expenses arising out of or in any way relating to this Agreement, provided, however, that Warrior at its own expense (not to exceed \$25,000) shall provide to the WEI Estates and the Liquidating Trust reasonable access to all information from the WEI Estates' pre-conversion accountants as may be reasonably necessary for the Trustee, the Liquidating Trustee, and their professionals to perform their duties.

24. **Agreement Not an Admission.** This Agreement shall neither constitute nor be construed as an admission by any party as to any matter in dispute or as evidencing in any way an admission of any claims asserted by the Parties. The Parties hereto enter into this Agreement to avoid the expense and uncertainty in litigating their disputes with regard to certain of the assets described herein.

25. **No Prior Transfer of Interest.** The Trustee hereby acknowledges and agrees that he has not transferred or promised any right, claim, or interest in the subject matter of this Agreement, including the matters being settled, released, or compromised herein, nor authorized any other person or entity to assert any such claim on his behalf.

26. **No Prescription Against Drafter.** This Agreement shall be deemed drafted by both Parties hereto and any ambiguity herein shall not be construed against any party solely by virtue of its participation in the drafting process.

27. **Acknowledgment.** The Parties represent and acknowledge that: (a) they have carefully read this Agreement; (b) they have been represented by counsel during the negotiation of this Agreement; (c) they have been given a reasonable period of time in which to consider this Agreement; (d) they, either through their agents or through counsel, have appropriately investigated all facts surrounding the various claims, controversies, and disputes described herein; (e) they are fully satisfied with the terms, conditions and effects of this Agreement; and (f) they understand that this Agreement releases, waives, and divides known and unknown claims and rights and has other important legal consequences.

28. **Successors and Assigns; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the Parties hereto, and their respective successors and assigns. No person other than the Parties hereto and their respective successors and assigns shall have any rights or interests under this Agreement, nor shall there be any intended or incidental third-party beneficiaries of this Agreement.

29. **Severability.** If any provision or clause of this Agreement or the application thereof to any person or circumstance is determined by a court of competent jurisdiction to be invalid, void, or unenforceable, such provisions or clause shall be deemed amended to conform to applicable laws so as to be valid and enforceable so long as such amendment does not materially alter the intention of the Parties as expressed in this Agreement. If it does so materially alter such intention, such provision shall be stricken, and the remaining provisions hereof will remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

30. **Governing Law and Agreement to Jurisdiction.** This Agreement shall be governed by the internal laws of the State of Alabama, except as expressly provided elsewhere herein. All actions regarding the enforcement or interpretation of this Agreement shall occur before the United States Bankruptcy Court for the Northern District of Alabama, Southern Division, which shall retain jurisdiction therefor.

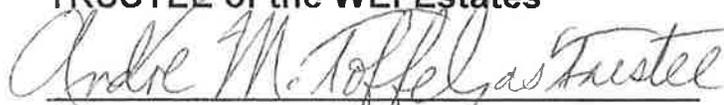
31. **Entire Agreement and Modification.** The Trustee and Warrior represent and acknowledge that no promise, inducement, or agreement other than what is expressed herein has been made and that this written document constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, agreements, understandings and offers, both written and oral, with respect to such subject matter. This Agreement may be amended, modified or supplemented only by a written agreement executed by all Parties. The Parties need not seek approval of the modification from the Bankruptcy Court, unless the modification materially diminishes the monetary recovery of a non-party which does not then consent to the modification.

32. **Duty to Meet and Confer.** In the event that the WEI Estates are not fully closed by September 30, 2018, the Parties shall meet and confer with the Bankruptcy Administrator about a subsequent agreement (subject to Bankruptcy Court approval) that would address primarily the collection and liquidation of the various claims that the WEI Estates maintain, as detailed herein, and alternate approaches to winding down the WEI Estates. It is anticipated that the Liquidating Trust would continue to function several years beyond that date.

33. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

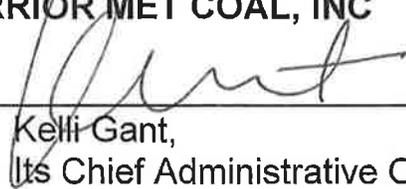
-SIGNATURE PAGES TO FOLLOW-

TRUSTEE of the WEI Estates



ANDRE' M. TOFFEL

WARRIOR MET COAL, INC

By: 
Kelli Gant,
Its Chief Administrative Officer