

*Route to Magistrate: Rob  
Over file ACT/007/007 # 2*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO

|                         |   |                       |
|-------------------------|---|-----------------------|
| In re:                  | ) |                       |
|                         | ) |                       |
| SUNNYSIDE COAL COMPANY, | ) | CASE NO. 94-12794 CEM |
|                         | ) |                       |
| Debtor.                 | ) | Chapter 7             |
|                         | ) |                       |
|                         |   |                       |

**NOTICE PURSUANT TO LOCAL BANKRUPTCY RULE 202 OF TRUSTEE'S  
MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BY  
THE TRUSTEE AND THE UMWA 1992 BENEFIT PLAN**

**TO ALL PARTIES IN INTEREST:**

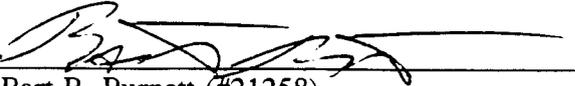
NOTICE is hereby given that Kenneth A. Rushton ("Trustee"), Chapter 7 Trustee for Sunnyside Coal Company, has filed a Motion in this Court for approval of a Settlement Agreement between the Trustee and the United Mine Workers of America 1992 Benefit Plan and Trust (the "1992 Plan"). Copies of the Motion and Settlement Agreement are enclosed and should be reviewed for the terms and conditions of the settlement and the support thereof.

Pursuant to Rule 202 of the Local Rules of Bankruptcy Procedure and the Court's order shortening the notice period, if you desire to oppose the Motion, you must file a written objection and request for a hearing with the Court on or before November 10, 1998, and serve a copy thereof on the undersigned attorney and on Barbara E. Locklin, Esq, UMWA Health & Retirement Funds, 4455 Connecticut Avenue, N.W., Washington, DC 20008. Objections and requests for hearing shall clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. General objections will not be considered by the Court.

In the event that an objection is timely filed, a hearing will be held on November 13, 1998, at 2:00 o'clock p.m. in Courtroom C of the United States Bankruptcy Court, U. S. Customs House, 721 19th Street, Denver, Colorado. In the event that an objection is not timely filed by an interested party, the Court may grant the Motion without any further notice to creditors or other interested parties.

DATED this 3rd day of November, 1998.

LeBOEUF, LAMB, GREENE & MacRAE  
L.L.P.

By: 

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Attorneys for Kenneth A. Rushton,  
Chapter 7 Trustee

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO

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| In re:                  | ) |                       |
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| SUNNYSIDE COAL COMPANY, | ) | CASE NO. 94-12794 CEM |
|                         | ) |                       |
| Debtor.                 | ) | Chapter 7             |

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**TRUSTEE'S MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BY  
THE TRUSTEE AND THE UMWA 1992 BENEFIT PLAN**

Kenneth A. Rushton (the "Trustee"), the Chapter 7 trustee in this case, pursuant to 11 U.S.C. § 105 and Fed.R.Bankr.P. 9019, moves for entry of an Order approving the Settlement Agreement dated November 2, 1998 (the "Settlement Agreement") by and between the Trustee and the United Mine Workers of America 1992 Benefit Plan and its Trustees (collectively, the "1992 Plan"). A copy of the Settlement Agreement is attached hereto as Exhibit 1. In support of this Motion, the Reorganized Debtors state as follows.

**Background**

1. Sunnyside Coal Company (the "Debtor" or "Sunnyside") filed its voluntary Chapter 11 petition on March 25, 1994. On June 23, 1995, the Court converted the case to one under Chapter 7 and on June 25, 1995, the Trustee was appointed interim trustee and thereafter became the Trustee.
2. This Court, as a unit of the United States District Court for the District of Utah, Central Division (the "District Court"), has jurisdiction over the Debtor's chapter 7 case and over this proceeding under 28 U.S.C. § 1334(a) and (b). This motion is a core proceeding under 28 U.S.C. § 157.
3. On January 4, 1996, the Trustee filed his objection to the Chapter 7 administrative claim asserted by the 1992 Plan in order to obtain a judicial determination that Sunnyside had no ongoing obligations under the Coal Act after conversion of the case to Chapter 7. On October 11, 1995, this Court, after considering the parties' initial pleadings, oral argument, and post-hearing briefs on several discrete issues, ruled that Coal Act premiums are not entitled to administrative expense priority in Chapter 7, either as taxes or as actual and necessary costs of expenses of administration.
4. The 1992 Plan filed a timely appeal of this Court's ruling and, after appellate briefing and oral argument, the United States Court for the District of Colorado (the "District Court") reversed this Court's decision, determining that Coal Act premiums continue to accrue during Chapter 7 and are taxes under 11 U.S.C. § 503(b)(1)(B).

5. The Trustee then appealed the District Court's ruling to the United States Court of Appeals for the Tenth Circuit. After briefing and oral argument, the Tenth Circuit affirmed the District Court's ruling in a split decision. In re Sunnyside Coal Co., 146 F.3d 1273 (10th Cir.1998). The majority relied generally on the Second Circuit's decision in LTV Steel Co. v. Shalala (In re Chateaugay Corp.), 53 F.3d 478 (2d Cir. 1995), cert. denied, \_\_\_ U.S. \_\_\_, 116 S.Ct. 298 (1995) and its reliance on County Sanitation Dist. No. 2 of Los Angeles County v. Lorber Industries of California, Inc. (Lorber Industries of California, Inc.), 675 F.2d 1062 (9th Cir. 1982). The dissent argued that the Lorber Industries decision's inclusion of virtually any exaction imposed for a "public purpose" was overly broad.

6. The Trustee believes that the District Court and the Tenth Circuit decisions are in error and he sought rehearing of the Tenth Circuit's decision and rehearing en banc by the Court. These motions were, however, denied.

7. The Trustee's only remaining appellate option is filing a petition for certioari with the United States Supreme Court. The Trustee is concerned, however, by the expense and time that would be consumed in taking such a step and the risk that the Supreme Court might not accept certiorari. The risk of a further appeal is heightened in this case by the 1992 Plan's ongoing monthly claim for premiums in the amount of approximately \$16,000 per month, which would continue to accrue during the pendency of a further appeal (if the 1992 Plan's claims accrue as Chapter 7 administrative tax claims, as specified in the Tenth Circuit's ruling).

8. The Trustee earlier settled with the 1992 Plan with respect to the 1992 Plan's Chapter 11 administrative expense claim and this Court approved that settlement. Relatively little remains to complete administration of this estate other than resolution of the subject of this Motion. Because of the relatively small likely distributions to general unsecured creditors, the Trustee does not believe that further scrutiny of most unsecured claims is cost-effective, although he has been negotiating with the Utah Division of Oil, Gas, and Minerals, which asserts the largest unsecured claim in the case, for significant reduction of that claim. The Trustee does not believe that there is any substantial dispute with the 1974 UMWA Pension Plan, which asserts a large claim based on withdrawal liability under ERISA. As a result, one of the provisions of the Settlement Agreement is that the Trustee will not seek reduction of that claim.

9. The Settlement Agreement provides for substantial concessions by both the Trustee on behalf of the estate and the 1992 Plan. The 1992 Plan's second amended claim asserted a Chapter 7 administrative expense claim of \$242,735.70 as of February 7, 1996. At oral argument before the District Court in June 1997, the 1992 Plan asserted that its Chapter 7 administrative expense claim to July 1, 1997 was approximately \$440,000 and that it would continue to accrue in the approximate amount of \$16,000 per month. The Trustee has no serious dispute regarding assignment of retirees to Sunnyside or calculation of premiums by the 1992 Plan. His principal dispute has been with the priority asserted for the 1992 Plan premiums.

10. In order to avoid the time, expense, and uncertainties of a continued appeal in this matter and to settle remaining disputes between them, the Trustee and the 1992 Plan have resolved these disputes on the terms set forth in the Settlement Agreement.

11. The Trustee, using his business judgment, having analyzed at length and in depth the issues involved in the appeal, and having considered the likelihood of success, has determined that approval of the Settlement Agreement, which provides for a global resolution of all remaining issues with the 1992 Plan, is in the best interests of the Sunnyside estate.

12. The Trustee and the 1992 Plan have negotiated and entered into the Settlement Agreement in good faith.

13. The Trustee, subject to authorization by this Court, has all requisite power and authority to enter into, execute, and deliver the Settlement Agreement and any other documents reasonably necessary to the consummation of the Settlement Agreement.

### The Settlement

14. In an effort to resolve this matter, the Trustee and the 1992 Plan have reached a comprehensive settlement, which has been memorialized in the Settlement Agreement.

15. The principal terms of the Settlement Agreement are summarized as follows. Reference should be made to the Settlement Agreement for a review of all of the terms of the Settlement Agreement. To the extent that the summary below is in any way inconsistent with the Settlement Agreement, the Settlement Agreement shall govern.

a. The 1992 Plan shall have a allowed Chapter 7 administrative expense claim of \$400,000, which will be paid upon approval of this Motion.

b. The Trustee will not file a petition for certiorari unless timing requires that he do so to protect his right to keep this avenue open pending the Court's consideration of this Motion.

c. The 1992 Plan will retain its allowed Chapter 11 administrative expense claim as earlier approved and will receive payment with respect to this claim when other allowed Chapter 11 administrative expense claims receive payment.

d. The Trustee will make every effort to submit his final report and make his final distribution within three months after the Order approving this Motion is entered. The Trustee will so file his report and make the final distribution unless the Trustee requests an extension and the 1992 Plan consents to, or this Court authorizes, the requested extension.

e. The Trustee will not request that the UMWA 1974 Pension Plan reduce its unsecured claim.

f. The Trustee will waive any conflict related to the 1992 Plan employing Phil Ellsworth of Robison, Hill & Co., who is serving as the Trustee's accountant. Work product of Phil Ellsworth may generally be provided to the 1992 Plan subject to restrictions set forth in the Settlement Agreement.

g. Consummation of the Settlement Agreement is contingent upon the approvals of this Court and the exchange of mutual releases.

### **Standards for Review**

The Court must consider whether the proposed settlement is fair, equitable, and in the best interests of the Debtor and its estates. Typically, in making such a determination, courts consider four factors which are derived from Protective Committee Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25, 88 S.Ct. 1157, 1163 (1968): (1) the probability of success in the litigation, (2) difficulties to be encountered in collection, (3) the complexities of the litigation involved, and (4) the paramount interest of the creditors and a proper deference to their reasonable views.

In the Settlement Agreement, the 1992 Plan has agreed to a substantial discount in the amount it could assert as a Chapter 7 administrative expense claim. The Trustee believes that this discount should result in there being sufficient funds in the estate to pay allowed priority claims and to make some distribution to general unsecured creditors. The Trustee has agreed not to pursue Supreme Court review of the Tenth Circuit's decision because of the risk that the Supreme Court would not accept certiorari and because of the delay and expense that would be involved in such a course of action (including the accrual of 1992 Plan premiums if certiorari is denied or if the Supreme Court ultimately affirmed the Tenth Circuit). The probability of success in the litigation is, therefore, uncertain. Use of the Trustee's accountant and certain of his work product (at the expense of the 1992 Plan) may be beneficial to the 1992 Plan in pursuing parties related to Sunnyside. The Trustee believes that there is no prejudice to the estate from his waiver of conflict in the Settlement Agreement and that this provides added incentive for the 1992 Plan to enter into the Settlement Agreement. The Trustee believes the Settlement Agreement is, therefore, in the paramount interest of Sunnyside's creditors. The Trustee has determined, therefore, considering the relevant factors and utilizing his business judgment, that this settlement is fair, equitable, and in the best interests of the Sunnyside estate..

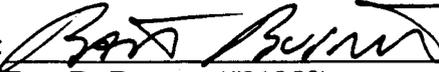
WHEREFORE, the Trustee requests that the Court enter an Order:

- A. Making findings of fact and conclusions of law as set forth above.
- B. Approving the Settlement Agreement as a compromise of disputes under 11 U.S.C. § 105 and Fed. R. Bankr. P. 9019 and approving the Trustee's execution of the

Settlement Agreement and of any other documents necessary to the consummation of the Settlement Agreement.

DATED this 3rd day of November, 1998.

LeBOEUF, LAMB, GREENE & MacRAE  
L.L.P.

By: 

Bart B. Burnett (#21258)  
633 Seventeenth Street, #2800  
Denver, Colorado 80202  
Telephone (303) 291-2600

Steven J. McCardell (Utah Bar No. 2144)  
Kenneth L. Cannon II (Utah Bar No. 3705)  
Penrod W. Keith (Utah Bar No. 4860)  
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136 South Main Street  
Salt Lake City, Utah 84101  
Telephone No: (801) 320-6700

Attorneys for Kenneth A. Rushton,  
Chapter 7 Trustee

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is dated November 2, 1998, and is made by and among Kenneth A. Rushton (the "Trustee"), Chapter 7 Trustee of Sunnyside Coal Company ("Sunnyside" or the "Debtor"), on behalf of Sunnyside, and the United Mine Workers of America 1992 Benefit Plan and its Trustees (collectively, the "1992 Plan"). Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings ascribed to them in section 1 hereof.

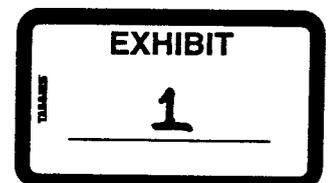
### RECITALS

WHEREAS, in March 1994, Sunnyside filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Colorado (the "Bankruptcy Court"); and

WHEREAS, in June 1995, the Bankruptcy Court converted the case to a case under Chapter 7 and appointed Mr. Rushton as Chapter 7 Trustee; and

WHEREAS, on or about February 7, 1996, the 1992 Plan filed a second amended claim in which it asserted, among other claims, an administrative expense priority in the Debtor's case in the amount of \$242,735.70 for premiums accruing to it under the Coal Industry Retiree Health Benefits Act of 1992, 26 U.S.C. §§ 9701, et seq. (the "Coal Act") and asserted that its Chapter 7 administrative claim would continue to accrue on a monthly basis in the amount of approximately \$16,000 per month; and

WHEREAS, the Trustee objected to the assertion of Chapter 7 administrative expense priority for premiums accruing during the period of the Debtor's Chapter 7 case; and



WHEREAS, the Bankruptcy Court sustained the objection to the assertion of Chapter 7 administrative expense priority by the 1992 Plan and disallowed the 1992 Plan's Chapter 7 administrative claim in full; and

WHEREAS, the 1992 Plan appealed the Bankruptcy Court's decision and the United States District Court for the District of Colorado (the "District Court") reversed the Bankruptcy Court's decision; and

WHEREAS, the Trustee appealed the District Court's ruling but the United States Court of Appeals for the Tenth Circuit (the "Tenth Circuit") affirmed the District Court's decision; and

WHEREAS, the Tenth Circuit denied the Trustee's motions for rehearing of its decision and for rehearing en banc of its decision; and

WHEREAS, the Trustee has considered filing a petition for certiorari to the United States Supreme Court (the "Supreme Court"), but is concerned about the expense and the time such a step would take, the risk that the Supreme Court would not accept certiorari, and the ongoing monthly accrued of the claim of the 1992 Plan; and

WHEREAS, the 1992 Plan would oppose any petition for certiorari by the Trustee and believes that the rulings of the District Court and the Tenth Circuit are correct but wishes to avoid the expense of proceedings in the Supreme Court; and

WHEREAS, the parties earlier stipulated to the allowance of a Chapter 11 administrative expense priority claim in favor of the 1992 Plan in the amount of \$100,000 (the "1992 Plan Chapter 11 Administrative Claim") and that stipulation has been approved by the Bankruptcy Court; and

WHEREAS, the parties, in an attempt to avoid the substantial costs and risks inherent in further appeals and to resolve all remaining disputes between them, have reached settlement of all remaining disputed matters among them and have reduced the terms of the settlement to writing in this Agreement; and

WHEREAS, the consideration and approval of this Agreement constitute a core proceeding under 28 U.S.C. §157;

### AGREEMENT

NOW, THEREFORE, in consideration of the premises, covenants, agreements, terms, obligations, and conditions contained herein, IT IS AGREED as follows:

1. Definitions. As used in this Agreement or internally in the definitions hereinafter set forth, the following defined terms shall have the following meanings:

"Approval Order" shall mean the order of the Bankruptcy Court approving this Agreement. A proposed form of the Approval Order is attached hereto as Exhibit A.

"Business Day" shall mean any day except a Saturday, Sunday, or legal holiday as defined in Bankruptcy Rule 9006(a).

"Closing Date" shall mean the first Business Day after all of the following have taken place: (i) the parties have executed and delivered this Agreement, and (ii) the Approval Order provided for in paragraph 3(a) of this Agreement has become a Final Order.

"Final Order" shall mean a judgment, order, or other decree issued or approved by the Bankruptcy Court which has been entered and as to which the appeals period has run, which judgment, order, or other decree has not been reversed or stayed pending appeal.

2. Terms of Settlement. The terms of the settlement reached by the parties are as follows:

(a) Chapter 7 Administrative Claim of the 1992 Plan. The Trustee and the 1992 Plan agree, in compromise and resolution of the Chapter 7 administrative claim asserted by the 1992 Plan and the Trustee's objection thereto, that the 1992 Plan shall have an allowed Chapter 7 administrative expense claim in the total amount of \$400,000 (the "Chapter 7 Administrative Claim"). The Trustee will forthwith submit a motion requesting approval of this Agreement and the allowance of the Chapter 7 Administrative Claim. On the Closing Date, the Trustee will pay the 1992 Plan \$400,000, without interest, in full satisfaction of the Chapter 7 Administrative Claim.

(b) Certiorari Petition. The Trustee will not file a certiorari petition with the Supreme Court seeking review of the Tenth Circuit's ruling regarding the priority of the 1992 Plan's Chapter 7 claim, provided that the Bankruptcy Court approves this Agreement prior to the expiration of the period for the Trustee to file such a petition. If the Agreement is not approved prior to one week before that period expires, the Trustee may prepare a petition for certiorari and, if the Agreement is not approved before that period expires, the Trustee may file a petition for certiorari. If the Bankruptcy Court thereafter approves this Agreement, the Trustee will seek leave to withdraw his petition for certiorari.

(c) 1992 Plan Chapter 11 Administrative Claim. The 1992 Plan will retain its Chapter 11 Administrative Claim as earlier approved and ordered by the Bankruptcy Court and will receive payment at the same time other allowed Chapter 11 administrative claims receive payment.

(d) No Operations: Trustee's Final Report and Distribution. Sunnyside will have no further operations. The Trustee shall make every effort to submit his final report and make his final distribution within three months after the Approval Order is entered. The Trustee shall file his final report and make the final distribution within three months after the Approval Order is entered unless the Trustee requests an extension and the 1992 Plan consents to, or the Bankruptcy Court authorizes, the requested extension. The 1992 Plan will not withhold its consent unreasonably. It is contemplated that, even though the Trustee will file his final report and make final distribution within the designated time period, the Trustee will subsequently file a supplemental report after 60 to 90 days noting distributions checks not cashed, addresses not found, and the like, and that the Debtor's case will not be closed until after the filing of the supplemental report.

(e) The Trustee will not request that the UMWA 1974 Pension Plan reduce its unsecured claim.

(f) The Trustee will waive any conflict related to the 1992 Plan employing Phil Ellsworth of Robison, Hill & Co., who is currently employed as an accountant by the Trustee. The work product of Phil Ellsworth in connection with his employment by the Trustee will be made available to the 1992 Plan, provided, however, that this work product will not include attorney strategies and legal impressions and the Trustee may redact materials provided to the 1992 Plan with respect to such attorney strategies and legal impressions.

3. Conditions Precedent to Binding Effect of Agreement. Each of the parties agrees to use its best efforts to consummate the provisions of this Agreement, including submission of evidence and argument to the Bankruptcy Court if necessary, to obtain the Approval Order and including best efforts to obtain in the Approval Order a finding that this Agreement has been

entered into in good faith by the parties and is otherwise appropriate under any applicable law. Except as provided in the foregoing sentence, this Agreement shall not bind the parties and shall not be effective until each of the following conditions has been satisfied:

(a) Bankruptcy Court Approval Order. The Bankruptcy Court shall have entered the Approval Order in substantially the form agreed to by the parties and the Approval Order shall have become a Final Order. The Approval Order shall contain all of the provisions required for purposes of implementing the provisions of this Agreement, including without limitation approval of the Releases referred to below and any other documents necessary to carry out the Agreement. The Approval Order shall be entered only after notice to parties in interest.

(b) Releases. On or before the Closing Date, the Trustee shall deliver to the 1992 Plan an executed release substantially in the form attached hereto as Exhibit B (the "Sunnyside Release"). On or before the Closing Date, the 1992 Plan shall deliver to the Trustee an executed release substantially in the form attached as Exhibit C (the "1992 Plan Release").

4. Representations and Warranties of the Trustee. The Trustee represents and warrants, as of the date this Agreement is executed and as of the Closing Date, that:

(a) He has all requisite power and authority to execute and deliver this Agreement, the Sunnyside Release, and any other documents necessary to consummate this Agreement and perform his obligations hereunder and thereunder, subject to obtaining approval thereof by the Bankruptcy Court in the Approval Order.

(b) The execution, delivery, and performance by the Trustee of this Agreement, the Sunnyside Release, and any other documents necessary to consummate this

Agreement require no, and will not require any, action by or in respect of, or filing with, any governmental body, agency, or official, except as provided herein or therein, in order for such agreements or instruments to be valid and enforceable, and do not now and will not contravene or constitute a default under any provision of any applicable law or regulation.

(c) When executed and delivered in accordance with the terms of this Agreement and in the form of the accompanying exhibits, each one of this Agreement, the Sunnyside Release, and any other documents necessary to consummate this Agreement, constitutes a valid and, at such time as the Approval Order becomes a Final Order, binding agreement or instrument of the Trustee on behalf of the Debtor enforceable in accordance with its terms.

5. Representations and Warranties of the 1992 Plan. The 1992 Plan represents and warrants, as of the date this Agreement is executed and as of the Closing Date, the following:

(a) The 1992 Plan has all requisite power and authority to execute and deliver this Agreement, the 1992 Plan Release, and any other documents necessary to consummate this Agreement and perform its obligations hereunder and thereunder.

(b) The execution, delivery, and performance by the 1992 Plan of this Agreement, the 1992 Plan Release, and any other documents necessary to consummate this Agreement require no further, and will not require any further, action by or in respect of, or filing with, any governmental body, agency, or official, except as provided herein or therein, in order for such agreements or instruments to be valid and enforceable, and do not now and will not contravene or constitute a default under any provision of any applicable law or regulation, or of any enabling legislation creating the 1992 Plan.

(c) When executed and delivered in accordance with the terms of this Agreement and in the form of the accompanying exhibits, each one of this Agreement, the 1992 Plan Release, and any other documents necessary to consummate this Agreement, constitutes a valid and binding agreement or instrument of the 1992 Plan enforceable in accordance with its terms.

6. Termination.

(a) This Agreement shall automatically terminate and be of no further force and effect, and the parties hereto shall thereupon be released from all obligations hereunder (except that the provisions of paragraph 6(c) shall survive such termination), if any one or more of the following events occurs:

(i) if for any reason the Motion for entry of the Approval Order is denied or an order is entered, which has become a Final Order, that precludes the execution and delivery of this Agreement by the Trustee; or

(ii) if for any reason the Approval Order is not entered; or

(iii) if for any reason the Approval Order is entered, has become a Final Order, and contains provisions materially inconsistent with this Agreement or is entered without containing all of the provisions required as a condition to the effectiveness of this Agreement:

(b) This Agreement may also be terminated at the sole option of the injured party by written notice effective upon transmittal in accordance with paragraph 8(a) and this Agreement shall thereupon be of no further force and effect, and the parties hereto shall thereupon be released from all obligations hereunder (except that the provisions of paragraph 6(c) shall survive such termination), as follows:

(i) by the Trustee, if the 1992 Plan shall fail to perform any of their material obligations hereunder, including without limitation, the execution of all documents necessary for the consummation of this Agreement, or if the 1992 Plan's representations and warranties set forth in paragraph 5 hereof are untrue in any material respect as of the date the Approval Order becomes a Final Order, or as otherwise specified therein; or

(ii) by the 1992 Plan, if the Trustee shall fail to perform any of his material obligations hereunder, including without limitation, the execution of all documents necessary for the consummation of this Agreement, the failure to pay to the 1992 Plan its Chapter 7 Administrative Claim, or if the Trustee's representations and warranties set forth in paragraph 4 hereof are untrue in any material respect as of the date the Approval Order becomes a Final Order, or as otherwise specified therein.

(c) In the event of termination of this Agreement pursuant to paragraphs 6(a) or 6(b), the parties hereto acknowledge and agree that this Agreement, and all negotiations and proceedings connected with this Agreement, shall be without prejudice to the rights or remedies of the parties hereto, and no part of this Agreement, or any statement by any party, any finding of fact or any conclusions of law related thereto may be used in any manner by any party hereto in any action, suit, or proceeding as evidence of the respective rights, liabilities, duties, or obligations of the parties. The parties further acknowledge and agree that all undertakings and agreements contained in this Agreement have been agreed to solely for the purpose of effectuating a voluntary settlement of the claims and disputes between the parties and shall not be deemed to constitute an admission or concession by any of them for any purpose, nor shall such undertakings and agreements or this Agreement itself be deemed to

constitute a waiver of any legal position or any theories or defenses that any of the parties hereto might assert in any context.

7. Other Settlements. The parties agree that, except as provided herein, their obligations under this Agreement, the Releases, and under any other documents necessary to consummate this Agreement, are not conditioned or affected in any way by any other settlement made or pending by and between the parties hereto, or any of them, and any other party.

8. Miscellaneous.

(a) Notices. All notices, requests, and other communications to either party hereunder shall be in writing, and delivered by certified mail, return receipt requested, by Federal Express, or by facsimile, and shall be given to such party at the following addresses:

If to the Trustee:

Kenneth A. Rushton  
99 West Main Street, #202  
P.O. Box 212  
Lehi, Utah 84043

With a copy to:

Kenneth L. Cannon II  
LeBoeuf, Lamb, Greene &  
MacRae, L.L.P.  
136 South Main Street, #1000  
Salt Lake City, UT 84101

If to the 1992 Plan:

Brian H. Benjet  
United Mine Workers Health  
and Retirement Funds  
4455 Connecticut Avenue, N.W.  
Washington, D.C. 20008

With a copy to:

Jami Wintz McKeon  
Morgan, Lewis & Bockius  
2000 One Logan Square  
Philadelphia, PA 19103-6993

(b) Benefit of Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(c) Entire Agreement and Amendment. This Agreement together with exhibits hereto, constitutes the entire agreement agreed to by the parties hereto relating to the

subject matter hereof, and may not be amended, altered, or modified, except by a writing executed by a duly authorized representative of each of the parties hereto. Any material modification shall be subject to the approval of the Bankruptcy Court. This Agreement shall in no event be construed or deemed to be evidence of any admission on the part of any party of any liability or wrongdoing.

(d) Headings. The headings herein are inserted for convenience of reference only and shall not affect the construction or interpretation hereof.

(e) Counterparts and Multiple Originals. This Agreement may be executed in any number of counterparts, and/or originals, each of which shall be an original, with the same effect as if the signatures thereto and hereto were on the same instrument.

(f) Governing Law. This Agreement shall be governed by and construed in accordance with Colorado law, except to the extent that federal law governs this Agreement.

(g) Enforcement. In the event litigation or other proceedings are commenced to enforce any of the provisions of this Agreement, the Sunnyside Release, the 1992 Plan Release, or any other documents executed in conjunction with this Agreement, the prevailing party shall be entitled to receive all costs and expenses, including reasonable attorneys' fees, of such litigation or proceedings, as fixed by the court.

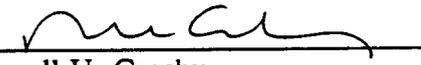
(h) Parties to Bear Own Costs. As part of this Agreement, each of the parties shall pay its own cost and attorneys' fees arising from the proceedings described herein, and each party hereto waives and releases the other parties from whatever claims the one might have against the other for such costs and attorneys' fees.

IN WITNESS WHEREOF, this Agreement has been executed on behalf of each of the parties hereto on the day and year first above written.

KENNETH A. RUSHTON,  
Chapter 7 Trustee of Sunnyside

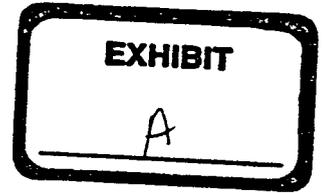
  
\_\_\_\_\_

UNITED MINE WORKERS OF AMERICA  
1992 BENEFIT PLAN and ITS TRUSTEES

By:   
\_\_\_\_\_

Russell U. Crosby  
Executive Director

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO



\_\_\_\_\_) )  
In re: ) )  
SUNNYSIDE COAL COMPANY, ) )  
Debtor. ) )  
\_\_\_\_\_) )

CASE NO. 94-12794 CEM  
Chapter 7

**ORDER APPROVING MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT  
BY THE TRUSTEE AND THE UMWA 1992 BENEFIT PLAN**

The Court, having considered the motion ("Motion") of Kenneth A. Rushton, Chapter 7 trustee (the "Trustee") for Sunnyside Coal Company ("Sunnyside" or the "Debtor"), pursuant to 11 U.S.C. § 105 and Fed.R.Bankr.P. 9019, for entry of an Order approving the compromise of a dispute and settlement agreement by and between the Trustee, on behalf of the Debtor, and the United Mine Workers of America 1992 Benefit Plan and its Trustees (collectively, the "1992 Plan") dated \_\_\_\_\_ (the "Settlement Agreement"), and the Settlement Agreement, no objections having been filed thereto, it appearing that the Settlement Agreement has been entered into in good faith and is appropriate under applicable law, and good cause appearing therefor, hereby

**ORDERS:**

- A. Pursuant to 11 U.S.C. § 105 and Bankruptcy Rule 9019, the Motion is approved as a compromise of a dispute and the Settlement Agreement and its terms are approved. The parties' execution of the Settlement Agreement and of documents necessary to the consummation of the Settlement Agreement, including joint releases, is approved.
- B. The Chapter 7 administrative expense priority claim of the 1992 Plan as provided for in the Settlement Agreement is allowed in the amount of \$400,000 and the Trustee is authorized forthwith to pay this allowed Chapter 7 administrative claim.
- C. The 1992 Plan's allowed Chapter 11 administrative expense priority claim formerly allowed by Order of this Court pursuant to stipulation of the Trustee and the 1992 Plan shall be paid when other remaining allowed Chapter 11 administrative expense claims are paid.
- D. The Trustee's waiver of any conflict related to the 1992 Plan employing Phil Ellsworth of Robison, Hill & Co., the Trustee's accountants in this case, is hereby approved.

E. This Court shall retain exclusive jurisdiction over all disputes concerning the interpretation and enforcement of the Settlement Agreement and documents necessary to the consummation of the Settlement Agreement.

DATED this \_\_\_\_ day of \_\_\_\_\_, 1998.

BY THE COURT:

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Honorable Charles E. Matheson  
Chief Judge, United States Bankruptcy Court

SUNNYSIDE RELEASE

KNOW ALL MEN BY THESE PRESENTS, that Kenneth A. Rushton (the "Releasor"), as Chapter 7 trustee of Sunnyside Coal Company ("Sunnyside"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, on behalf of Sunnyside, its predecessors, successors, and assigns, does hereby release, waive, and discharge the United Mine Workers of America 1992 Benefit Plan and its Trustees, and their respective predecessors, successors, and assigns as well as any of their officers, directors, agents, or affiliates (the "Releasees"), from any and all rights and claims (as defined in title 11 of the United States Code) which were or could have been asserted by the Releasor which in any way relate to Sunnyside's former employment of coal miners which he heretofore, now, or hereafter possesses or may possess against the Releasees except as set forth or provided for in the Settlement Agreement dated \_\_\_\_\_ 1998, between the Releasor and the Releasees.

This Release is not intended to and does not constitute a release of any Person other than the Releasee, and the Releasor specifically reserves any and all rights to proceed against any Person other than a Releasee.

This Release shall be governed by and construed in accordance with the laws of the State of Colorado, except to the extent that federal law governs it.

IN WITNESS WHEREOF, this Release has been duly executed on behalf of the Releasor as of this \_\_\_\_ day of \_\_\_\_\_, 1998.

KENNETH A. RUSHTON,  
Chapter 7 Trustee of Sunnyside Coal Company

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UMWA 1992 BENEFIT PLAN RELEASE

KNOW ALL MEN BY THESE PRESENTS, that the United Mine Workers of America 1992 Benefit Plan and its Trustees (collectively, the "1992 Plan" or the "Releasors"), on behalf of the 1992 Plan, themselves, their respective predecessors, successors, and assigns, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby release, waive, and discharge the bankruptcy estate of Sunnyside Coal Company ("Sunnyside") and Kenneth A. Rushton, as Chapter 7 Trustee for Sunnyside (the "Trustee") (collectively, Sunnyside and the Trustee will be referred to as the "Releasees"), from any and all rights and claims (as defined in title 11 of the United States Code) of the 1992 Plan, arising under the Coal Industry Retiree Health Benefits Act (the "Coal Act"), which rights and claims Releasors heretofore, now, or hereafter possess or may possess against the Releasees except as set forth or provided for in the Settlement Agreement dated \_\_\_\_\_, 1998, between the Releasors and the Trustee.

This Release is not intended to and does not constitute a release of any Person other than Sunnyside and the Trustee, and the Releasors specifically reserve any and all rights to proceed against any Person other than Sunnyside and the Trustee.

This Release shall be governed by and construed in accordance with the laws of the State of Colorado, except to the extent that federal law governs it.

IN WITNESS WHEREOF, this Release has been duly executed on behalf of the Releasors as of this \_\_\_\_ day of \_\_\_\_\_, 1998.

United Mine Workers of America  
1992 Benefit Plan and Its Trustees

By: \_\_\_\_\_  
Name: Russell U. Crosby  
Title: Executive Director