

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

In re:

WALTER ENERGY, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-\_\_\_\_(\_\_\_\_)

Joint Administration Requested

**THE DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS (A) AUTHORIZING (I) THE DEBTORS TO PAY PREPETITION CLAIMS  
OF CERTAIN CRITICAL VENDORS AND FOREIGN VENDORS  
AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS  
RELATED CHECKS AND TRANSFERS AND (B) GRANTING RELATED RELIEF**

Walter Energy, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (each a “Debtor,” and, collectively, the “Debtors”) hereby move this Court for entry of an interim order substantially in the form attached hereto as Exhibit A (the “Interim Order”) and a final order substantially in the form attached hereto as Exhibit B (the “Final Order”), pursuant to sections 105, 363, 503(b)(9), 506(b) and 507(a)(2) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the Debtors to pay, in their sole discretion, the prepetition claims of certain critical vendors and foreign vendors and granting related relief. In support of this motion (the “Motion”), the Debtors rely upon the

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: 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); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); 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); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.



*Declaration of William G. Harvey in Support of First Day Motions* (the “First Day Declaration”)<sup>2</sup> and respectfully state as follows:

### **JURISDICTION**

1. This Court has jurisdiction to hear the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. The statutory and legal predicates for the relief requested herein are sections 105, 363 and 506(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

### **BACKGROUND**

3. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the instant cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee, examiner or official committee has been appointed in the Chapter 11 Cases.

5. Information regarding the Debtors’ businesses, their capital and debt structure and the events leading to the filing of the Chapter 11 Cases is contained in the First Day Declaration.

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<sup>2</sup> The First Day Declaration is being filed contemporaneously with this Motion and is incorporated herein by reference. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the First Day Declaration.

## **THE DEBTORS' CRITICAL VENDORS AND FOREIGN VENDORS**

6. By this Motion, the Debtors seek entry of interim and final orders (a) authorizing the Debtors to (i) pay, in their discretion, prepetition claims in the aggregate amount of up to \$8. million<sup>3</sup> as follows: certain Critical Vendors (as defined below) in the amount of approximately \$7.9 million and Foreign Vendors (as defined below) in the amount of approximately \$300,000; and (ii) authorize and direct financial institutions to honor and process related checks and transfers and (b) granting related relief.<sup>4</sup> Specifically, the Debtors seek authority, (a) upon entry of the Interim Order, to pay up to an aggregate amount of \$5.7 million (the “Interim Claims Cap”) on account of such Critical Claims and Foreign Claims (each as defined below and together, the “Claims”) and (b) upon entry of the Final Order, to pay up to the aggregate amount of \$8.2 million (the “Final Claims Cap” and, together with the Interim Claims Cap, the “Claims Caps”) on account of such Claims.

7. The Debtors have reviewed the relief sought in this Motion with counsel to the Steering Committee, and such relief, including all payments and transfers authorized herein, shall be subject to and made in accordance with, the terms of the *Interim Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to Prepetition Secured Parties, (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) and (D) Granting Related Relief* (the “Interim Cash Collateral Order”) and related final order.

8. In preparation for the commencement of these Chapter 11 Cases, the Debtors, with the assistance of their advisors, carefully examined all aspects of the Debtors’ operations –

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<sup>3</sup> Such amount excludes any amounts owed to Lien Claimants (as defined in the *Debtors’ Motion for Entry of Interim and Final Orders (A) Authorizing (I) Payment of Certain Prepetition Claims of Shippers, Storage Providers and Service Providers and (II) Financial Institutions to Honor and Process Related Checks and Transfers and (B) Granting Related Relief* (the “Lien Claimants Motion”) for which payment is sought in the Lien Claimants Motion filed contemporaneously herewith.

<sup>4</sup> The Debtors reserve the right to seek to increase the Claims Caps if necessary, subject to this Court’s approval, and, with respect to any increase to the Final Claims Cap, with the consent of the Steering Committee.

and, in particular, their supply chain – to determine how best to minimize the adverse impact of these Chapter 11 Cases on the Debtors’ business operations and their trade credit terms postpetition. Specifically, the Debtors undertook a thorough review of their accounts payable and their list of prepetition vendors and service providers and worked with business leaders for each of their divisions and departments, to identify those parties that are both essential to the Debtors’ operations and cannot be replaced within a sufficiently short interval to avoid disruption to the Debtors’ operations. In evaluating these vendors and service providers, the Debtors considered, among other things, (a) whether the vendor in question is a “sole-source” or “limited source” provider, (b) what the overall impact on the Debtors’ revenue and operations would be if the particular vendor ceased or delayed shipments or services and (c) whether paying a particular vendor would avoid or materially lessen any immediate and irreparable harm that Debtors’ business operations might otherwise sustain, particularly with respect to certain long-term strategic partnerships or other key relationships.

9. After evaluating these criteria, the Debtors estimated the total payments that would be necessary to ensure the continued supply of critical goods and services to the Debtors if the vendors refused to extend trade terms postpetition without such payment. Based on these and other considerations, the Debtors identified certain key vendors who are essential to the Debtors’ ongoing business operations. These parties fall into two general categories: (1) sole source or limited suppliers, manufacturers and other vendors and service providers who are critical to the Debtors’ operations and (2) service providers who are located outside of the United States. For the reasons described below, the cessation of deliveries or services by any of the vendors or service providers in these two categories would have an immediate and material adverse impact on the Debtors’ businesses and cause irreparable harm.

**A. Critical Products and Services**

10. To operate their business, the Debtors rely heavily on suppliers, vendors and service providers (each, a “Critical Vendor,” and collectively, the “Critical Vendors”) that provide: (a) safety equipment and services; (b) sole or limited source specialized mining equipment, parts, supplies and services; and (c) mine degasification services (collectively, the “Critical Products and Services”). The Critical Vendors provide supplies, equipment and services that are necessary for the Debtors to ensure the safety of their employees, to satisfy the wide range of federal and state regulations applicable to their businesses and to continue their day-to-day operations, including the following.

(a) *Safety Equipment and Services*

11. The Debtors’ foremost concern is to ensure the safety and well-being of their employees. The coal mining industry is highly regulated by federal and state authorities and the Debtors have historically maintained an excellent safety record. Towards that end, the Debtors require many specialized supplies and services to ensure that their mines are safe for their employees.

12. The highly regulated nature of the Debtors’ business severely restricts their options in selecting vendors for safety equipment and services. In some cases, the regulatory agency issuing a work permit for the Debtors expressly specifies which vendor or vendors are authorized to perform the work under the work permit. For example, there is only one supplier of specialized roof bolts, glue and roof bolting equipment, which are required to ensure the Debtors’ mines have a proper roof control mechanism to prevent collapse, whose products both meet stringent regulatory requirements and meet the specifications built into the Debtors’ regulatory permits. The Debtors must also purchase – from very limited, government-approved sources – large quantities of rockdust (*i.e.*, crushed limestone) to prevent mine explosions and

meet federal and state safety regulations. Because uniform color and quality are critical characteristics for rockdust, the Debtors would face a lengthy and costly process if they were to seek approval of a replacement vendor.

13. Even in cases in which the Debtors are not specifically required to use certain vendors, the pool of eligible vendors is often limited by the strict regulatory conditions under which the Debtors and their potential vendors operate. For example, the Debtors are in the process of installing state-of-the-art ventilation shafts and openings at Jim Walter's No. 4 and No. 7 mines. These ventilation shafts must conform to specifications set by federal law, but under the onerous certification process imposed by the applicable regulatory agencies, few service providers are qualified to bid on the ventilation project. In such cases, the Debtors must rely on the limited number of qualified vendors, as there are few, if any, substitutes in the market to supply these required products and services.

14. Finally, the nature of the Debtors' businesses requires the Debtors to maintain a steady, uninterrupted stream of goods and services to their mines and wells and, more importantly, to the miners and other employees whose safety, health and well-being depend upon these goods and services. Inspectors from regulatory agencies conduct almost continuous inspections of the Debtors' mines for sufficient and uniform application of rockdust, for example, so any interruption in the Debtors' supply of rockdust would result in a temporary shutdown of the affected mine sections, as well as federal penalties for endangering employees.

(b) *Mining Equipment, Parts and Supplies*

15. The Debtors also require certain specialized mining equipment, parts, supplies and related services for the operation of their businesses, including long-wall mining equipment, cutting drums and shields to extract the underground metallurgical coal while protecting the mine workers. Moreover, the Debtors must routinely replace specialized conveyor belts of a

particular belt grade to withstand certain levels of wear and tear. Similarly, they regularly have to purchase specialized valve pump seals and hydraulic oils and lubricants. As with the safety equipment, all vendors of these supplies must be approved by the applicable government agency and cannot be substituted absent government approval of new permits. Further, once equipment from a particular approved vendor has been acquired and installed, these vendors and their distributors are typically the sole or limited source suppliers of replacement parts, maintenance supplies and repair services that are critical to the Debtors' businesses.

(c) *Coalbed Methane Degasification*

16. The coal seams at Jim Walter's No. 4 and No. 7 mines have some of the highest coalbed methane gas content in the world. These mines must be degasified before the metallurgical coal can be extracted.<sup>5</sup> To that end, the Debtors rely on Black Warrior Methane Corp. ("BW Methane") and Black Warrior Transmission Corp. ("BW Transmission") and together with BW Methane, the "Black Warrior Companies") to ensure that these key mines are degasified. Each of BW Methane and BW Transmission is a corporation owned 50% by Jim Walter Resources ("Jim Walter") and 50% by ARP Production Company LLC ("ARP"), a subsidiary of Atlas Resource Partners, LP. In general, the Black Warrior Companies function as stand-alone corporations with two equal shareholders. They have their own boards of directors and for the most part perform their own accounting, cash management and banking, procurement and logistics and other functions. For the sake of administrative convenience and to benefit from economies of scales, the Debtors perform certain functions for the Black Warrior Companies for which the Debtors get reimbursed.

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<sup>5</sup> Jim Walter Resources is the named lessee on the mineral leases for the extraction of methane gas, but BW Methane has historically paid all royalties owed under the mineral leases directly to the lessors. Royalties paid by BW Methane on account of these mineral leases average approximately \$182,000 per month.

17. The Black Warrior Companies extract coal bed methane gas from Jim Walter's No. 4 and No. 7 mines at cost and sell such gas to a third-party customer. The methane gas extracted by the Black Warrior Companies is compressed after removal from the wells by a third-party company and then piped into the dehydrators and sold directly to customers. This third-party compressor company is a crucial link to the degasification and sales process and any disruption at the compressor point would halt the degasification process. The Black Warrior Companies maintain two metered sales points through which they flow gas to customers. Each of the shareholders, Jim Walter and ARP, is entitled to receive the revenues from these sales points based on the actual gas volume flowing through to customers and various other factors. The Black Warrior Companies calculate the actual revenue due to each shareholder based on the differences in the volumes at each sales point, as well as differences in well participation (ARP does not participate in all of the wells), and remit a sales settlement adjustment to Jim Walter. The Black Warrior Companies also calculate the royalties due to Jim Walter for the Black Warrior Companies' use of certain Jim Walter mineral rights, and remit such amount to Jim Walter. Jim Walter, in turn, calculates a monthly invoice to the Black Warrior Companies for payments made by Jim Walter on their behalf (including payroll for the Black Warrior Companies' employees and certain other vendor payments), as well as for direct charges to the Black Warrior Companies for services performed by Jim Walter (e.g., horizontal drilling and a management fee).

18. The Black Warrior Companies and the third-party compressor company perform services that are essential to the on-going operation of the Debtors' businesses and would be cost-prohibitive to replace. Based on the various amounts owed to and from the shareholders discussed above, as well as amounts due to third party vendors, revenues credited to ARP, and



the maintenance of a \$400,000 cash balance at the Black Warrior Companies, the Black Warrior Companies calculate a monthly cash call invoice for each of Jim Walter and ARP. Jim Walter and ARP then each remits its portion of the cash call to the Black Warrior Companies so that the companies can fund their third party payments and make payments back to Jim Walter under the invoices. During the six months prior to the Petition Date, Jim Walter's cash call obligations paid to the Black Warrior Companies, net of all amounts due by the Black Warrior Companies to Jim Walter, total approximately \$320,000 per month. The Debtors seek authority to continue paying their share of cash calls and other obligations owed to the Black Warrior Companies in the ordinary course of their business, including to the extent such amounts include prepetition obligations. Absent such payments, the Black Warrior Companies may cease operating, leaving the Debtors without the critical degasification of their primary mines. A replacement vendor would take time to procure and would have costs projected to be substantially higher than those currently incurred by the Debtors for the cash call obligations.

19. Although the Debtors expect to procure a continuing supply of goods and services from the Critical Vendors in most cases through consensual negotiation, their fiduciary duties require them to consider and plan for situations in which vendors may refuse to provide future goods or services unless their prepetition claims are paid. Refusal by the Critical Vendors to provide required goods and services postpetition would have an immediate and potentially devastating effect on the Debtors' ability to operate in the normal course of business. As discussed herein, these Critical Vendors are so essential to the Debtors' businesses and their services so difficult to replace, that any interruption in the supply of these Critical Products and Services, even for a short period of time, would severely impair the Debtors' operations and cause irreparable harm to the Debtors' businesses, employees, customer base and market share.

This irreparable harm to the Debtors' estates and ultimately, to the recovery of the Debtors' creditors, will far outweigh the cost of payment of prepetition claims of these Critical Vendors.

20. For these reasons, the Debtors seek authorization to pay the prepetition claims of certain providers of these Critical Products and Services (collectively, the "Critical Claims") to ensure that they continue to manufacture and provide the Critical Products and Services to the Debtors during the pendency of these Chapter 11 Cases without disruption or delay, so that the Debtors will be able to continue to operate in the ordinary course of business as a single source supplier for their customers. The Debtors estimate that, as of the Petition Date, the aggregate amount of Critical Claims that may be satisfied pursuant to this Motion (exclusive of claims that are otherwise entitled to priority treatment, as discussed below) totals approximately \$7.9 million.

**B. Foreign Vendors**

21. In the ordinary course of business, the Debtors obtain certain critical goods and services from providers located outside of the United States (the "Foreign Vendors"), including foreign vendors who provide supplies needed for the mining operations and foreign sales agents. The Debtors rely on sales agents in foreign countries for the sale of coal to customers, as well as assistance with export documentation.<sup>6</sup> If these Foreign Vendors are not paid, they can withhold goods from the Debtors, terminate service contracts and cause other potential interruptions, for which the Debtors may not have effective recourse. The resulting service interruption could have disastrous consequences for the Debtors' business operations due to the lack of alternative service providers, or the amount of time needed to locate and convert to alternative service providers.

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<sup>6</sup> In certain instances, a local broker is required by applicable foreign law for the placement of coal in the foreign market.

22. Moreover, many of the Foreign Vendors may lack minimum contacts with the United States and, therefore, may not be subject to the jurisdiction of this Court or provisions of the Bankruptcy Code that otherwise protect the Debtors' assets and business operations. Based on the substantial experience of the Debtors' personnel in the industry and their knowledge of the Foreign Vendors, there is a risk that the Foreign Vendors holding claims against the Debtors may consider themselves to be beyond the jurisdiction of this Court, disregard the automatic stay and engage in conduct that disrupts the Debtors' operations. Notably, foreign entities that believe the automatic stay does not govern their actions may exercise self-help (if permitted under local law), which could include shutting down the Debtors' access to essential supplies of goods and services.

23. Furthermore, Foreign Vendors may also sue one or all of the Debtors in a foreign court to recover prepetition amounts owed to them. If they are successful in obtaining a judgment against the Debtors, the Foreign Vendors may exercise post-judgment remedies that could include withholding vital supplies from the Debtors. Since the Debtors would have limited, if any, effective and timely recourse and no practical ability to remedy this situation (absent payment of amounts sought), their businesses could be irreparably harmed by any such action to the detriment of their estates and their creditors.

24. Accordingly, by this Motion, the Debtors seek authorization to pay certain prepetition claims of the Foreign Vendors (the "Foreign Claims") to enable them to continue to receive the services of and eliminate the risk of potential collection attempts by, the Foreign Vendors. The Debtors estimate that, as of the Petition Date, the aggregate amount of Foreign Claims that may be satisfied pursuant to this Motion (exclusive of claims that are otherwise entitled to priority treatment, as discussed below) is approximately \$300,000.

## **BASIS FOR RELIEF REQUESTED**

25. The Debtors propose to condition the payment of any Claims owed to a particular Critical Vendor on the agreement of such Critical Vendor to continue supplying goods and/or services and extending trade credit to the Debtors on terms that are consistent with the trade and credit terms pursuant to which the Debtors and such Critical Vendor historically did business prepetition (the “Customary Trade Terms”). However, the Debtors reserve the right to negotiate different trade terms with any such vendor or service provider as a condition to payment of any such Claim, to the extent the Debtors determine that such trade terms are (a) necessary to procure essential goods and/or services or (b) otherwise in the best interests of the Debtors’ estates.

26. The goods and services provided by the Critical Vendors and Foreign Vendors are vital to the Debtors’ ongoing operations, specifically to their ability to provide supplies and equipment to their customers on a timely and uninterrupted basis. If the relief requested herein is not granted, such vendors and service providers may refuse to provide goods or services, causing immediate harm to the Debtors and their estates. For this reason, payment of the Critical Claims and Foreign Claims as set forth herein is necessary and appropriate under the circumstances.

27. The relief requested herein may be granted by the Court under the Court’s general equitable powers as codified in section 105(a) of the Bankruptcy Code. This section empowers the Court to “issue any order, process, or judgment that is necessary to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (citing Miltenberger v. Logansport, C. & S.W.R. Co., 106 U.S. 286 (1882)). Under section 105(a), a court “can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.” In re NVR L.P., 147 B.R.

126, 127 (Bankr. E.D. Va. 1992); see also In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (“To invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is critical to the debtor’s reorganization.”) (internal quotation omitted).

28. The “necessity of payment” rule further supports the relief requested in this Motion. See, e.g., Just for Feet, 242 B.R. at 826 (authorizing payment of prepetition claims of trade creditors that continue customary trade terms). The “necessity of payment” doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” Ionosphere Clubs, 98 B.R. at 176; see also In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987); In re Lehigh & New Eng. Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (payment of creditors’ claims authorized under “necessity of payment” doctrine); In re Penn Cent. Transp. Co., 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or materials essential to the conduct of the business until their pre-reorganization claims have been paid”); Just For Feet, 242 B.R. at 825 (authorizing payment of prepetition claims of trade creditors that continue customary trade terms and recognizing “the court’s power to authorize payment of prepetition claims when such payment is necessary for the debtor’s survival during chapter 11”); In re Columbia Gas Sys., Inc., 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that the debtors may pay prepetition claims that are “essential to continued operation of the business”); Ionosphere Clubs, 98 B.R. at 176 (necessity of payment rule applies to chapter 11 debtors). Accordingly, payment of prepetition claims under this doctrine, where, as here, they are necessary to the continued business performance of a debtor, is consistent with the

paramount goal of chapter 11, i.e., “facilitating the continued operation and rehabilitation of the debtor . . . .” Ionosphere Clubs, 98 B.R. at 176.

29. The Court also may authorize the Debtors to pay the Critical Claims and Foreign Claims as set forth herein pursuant to section 363(b)(1) of the Bankruptcy Code. This section authorizes the trustee to use property of the estate other than in the ordinary course of business after notice and a hearing. 11 U.S.C. § 363(b)(1). A debtor’s decision to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. See Int’l Ins. Co. v. Johns, 874 F.2d 1447, 1458 (11th Cir. 1989); In re Friedman’s, Inc., 336 B.R. 891, 895 (Bankr. S.D. Ga. 2005); see also In re Chateaugay Corp., 973 F.2d 141, 143 (2d Cir. 1992); In re Ionosphere Clubs, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989).

30. Here, payment of the Critical Claims and Foreign Claims is essential to the Debtors’ business performance during these Chapter 11 Cases. Thus, because the relief requested is based on the Debtors’ sound business judgment and will benefit the Debtors and all parties in interest, it is authorized under section 363(b) of the Bankruptcy Code.

31. Finally, certain Critical Vendors or other suppliers and manufacturers who provide goods to the Debtors likely will be entitled to administrative priority treatment in respect of all or a portion of their prepetition claims. Specifically, sections 503(b)(9) and 507(a)(2) of the Bankruptcy Code provide that prepetition claims on account of goods that are actually received by the Debtors in the 20-day period prior to the Petition Date are entitled to administrative priority. 11 U.S.C. §§ 503(b)(9), 507(a)(2). In turn, section 1129(a)(9)(A) of the Bankruptcy Code provides that such prepetition claims must be paid *in full* in order for a debtor to confirm a chapter 11 plan. Accordingly, paying such Critical Claims now presents mostly a matter of timing and does not impose greater administrative expenses on the Debtors’ estates

than they would otherwise have to pay. Moreover, distinguishing between priority and non-priority claims will be administratively burdensome. Consequently, payment of such Critical Claims at this time will maximize the value of the Debtors' estates by reducing the administrative burden on the Debtors' estates.

32. Where a Debtor's payment of Critical Vendors proves essential to a successful chapter 11 case, courts in this District have granted relief similar to that requested here. See, e.g., In re Bruno's Supermarkets, LLC, Case No. 09-00634 (BGC), ECF No. 117 (Bankr. N.D. Ala. Feb. 13, 2009) (order authorizing payments to prepetition vendors); In re Citation Corp., Case No. 04-08130 (TOM), ECF No. 62 (Bankr. N.D. Ala. Sept. 20, 2004) (same); In re Sch. Specialty, Inc., Case No. 13-10125 (KJC), ECF No. 79 (Bankr. D. Del. Jan. 30, 2013); In re THQ Inc., Case No. 12-13398 (MFW), ECF No. 145 (Bankr. D. Del. Jan. 11, 2013).

33. For all of the foregoing reasons, the Debtors seek authority, pursuant to sections 105(a), 363, 503(b)(9), 506(b) and 507(a)(2) of the Bankruptcy Code, to pay, in the Debtors' sole discretion, the undisputed amounts owed by the Debtors on account of outstanding Critical Claims and Foreign Claims.

**APPLICABLE BANKS SHOULD BE AUTHORIZED TO HONOR  
AND PAY CHECKS ISSUED AND MAKE OTHER TRANSFERS  
TO PAY THE CRITICAL CLAIMS AND FOREIGN SERVICES CLAIMS**

34. The Debtors further request that the Court authorize applicable banks and other financial institutions (collectively, the "Disbursement Banks") to honor and pay all prepetition and postpetition checks issued or to be issued and fund transfers requested or to be requested, by the Debtors on account of the Critical Claims and Foreign Claims regardless of whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date. The Debtors also seek authority to issue new postpetition checks, or effect new fund transfers, on

account of the Critical Claims and Foreign Claims to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

35. As a result of the commencement of the Chapter 11 Cases and in the absence of an order of the Court providing otherwise, the Debtors' checks or other transfers on account of the Critical Claims and Foreign Claims may be dishonored or rejected by the Disbursement Banks. Each of these checks or transfers can be identified as relating directly to payment of the Critical Claims and Foreign Claims and properly honored.

**SATISFACTION OF BANKRUPTCY RULE 6003  
AND WAIVER OF BANKRUPTCY RULE 6004**

36. The Debtors seek immediate authorization for the relief contemplated by this Motion notwithstanding Bankruptcy Rules 6003 and 6004. Specifically, Bankruptcy Rule 6003(b) provides that the Court shall not, within twenty-one (21) days after filing a petition, grant "a motion to use, sell, lease or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" unless the relief is "necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003(b). Likewise, Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."

37. Obtaining immediate authorization to pay Critical Claims and Foreign Claims is vital to the Debtors' continued viability. As set forth above, satisfying all Critical Claims and Foreign Claims is necessary and appropriate under the circumstances. Accordingly, the requirements of Bankruptcy Rule 6003(b) are met and ample cause exists to justify a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h).



### **RESERVATION OF RIGHTS**

38. Nothing in this Motion is intended or should be construed: (a) as an admission as to the validity of any claim or lien against the Debtors or their estates; (b) as a waiver of the Debtors' right to dispute any claim or lien; (c) as approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) to prejudice any of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any vendor or service provider.

### **NOTICE**

39. Notice of this Motion will be provided to: (i) the Office of the Bankruptcy Administrator for the Northern District of Alabama; (ii) counsel to the administrative agent for the Debtors' prepetition secured credit facility; (iii) the indenture trustee for each of the Debtors' outstanding bond issuances; (iv) counsel to the steering committee of first lien debt holders; (v) the Internal Revenue Service; (vi) the Securities and Exchange Commission; (vii) the U.S. Environmental Protection Agency; (viii) the U.S. Attorney for the Northern District of Alabama; (ix) counsel to the UMWA; (x) the USW; (xi) the holders of the fifty (50) largest unsecured claims against the Debtors, on a consolidated basis; and (xii) all persons and entities that have filed a request for service of filings in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, no other or further notice is necessary.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, the Debtors respectfully request entry of the Interim Order and the Final Order granting the relief requested herein and such other and further relief as is just and proper.

Dated: July 15, 2015  
Birmingham, Alabama

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**EXHIBIT A**

**PROPOSED INTERIM ORDER**

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

In re:

WALTER ENERGY, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-\_\_\_\_(\_\_\_\_)

Joint Administration Requested

Docket Ref. No. \_\_\_\_

**INTERIM ORDER (A) AUTHORIZING (I) THE DEBTORS TO PAY  
PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS AND FOREIGN  
VENDORS AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS  
RELATED CHECKS AND TRANSFERS AND (B) GRANTING RELATED RELIEF**

Upon the Motion<sup>2</sup> of Walter Energy, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (each a “Debtor” and, collectively, the “Debtors”), requesting entry of interim and final orders pursuant to sections 105, 363, 503(b)(9), 506(b) and 507(a)(2) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, authorizing, but not directing, the Debtors, in their discretion, to pay the prepetition claims of certain Critical Vendors and Foreign Vendors, honor and process related checks and transfers, and granting related relief; and it appearing that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that the relief requested is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and it appearing that such relief is necessary to avoid immediate and

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: 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); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); 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); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

<sup>2</sup> All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

irreparable harm, meaning that the requirements of Bankruptcy Rule 6003 have been satisfied; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED that:

1. The Motion is GRANTED on an INTERIM BASIS to the extent provided herein.
2. The Debtors are authorized, but not directed, in their sole discretion and in the reasonable exercise of their business judgment, to pay certain prepetition Critical Claims and Foreign Claims, subject to the conditions set forth in this Interim Order.
3. The Interim Claims Cap applicable to payment of the Critical Claims and Foreign Claims upon entry of this Interim Order shall not exceed \$5.7 million in the aggregate unless otherwise ordered by the Court.
4. The Debtors are authorized to pay the Critical Claims and Foreign Claims in the ordinary course of business, when due and not on an accelerated basis.
5. Any Critical Vendor or Foreign Vendor that accepts payment pursuant to the authority granted in this Interim Order shall be deemed to (a) agree to the terms and provisions of this Interim Order and (b) have waived, to the extent paid, any and all prepetition claims against the Debtors, their assets and their properties.
6. The Debtors shall undertake all appropriate efforts in the exercise of their sound business judgment to cause any applicable Critical Vendor or Foreign Vendor to enter into a trade agreement with the Debtors to provide post-petition credit on the terms which the Debtors and the applicable Vendor did business historically or such other favorable terms that the Debtors determine are in the best interest of their estates.
7. The execution of a trade agreement by the Debtors shall not be declared a waiver of any other cause of action, including any avoidance action, which may be held by the Debtors.

8. The Debtors' Disbursement Banks shall be and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay the Critical Claims and Foreign Claims, provided that sufficient funds are available in the applicable accounts to make the payments.

9. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be deemed or construed: (a) as an admission as to the validity of any claim or lien against the Debtors or their estates; (b) as a waiver of the Debtors' right to dispute any claim or lien; (c) as approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) to prejudice any of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any vendor or service provider.

10. Any payment made or to be made under this Order, and any authorization contained in this Order, shall be subject to the terms of the Interim Cash Collateral Order and related final order.

11. The Debtors shall maintain a matrix summarizing the name of each Critical Vendor and Foreign Service Provider paid on account of its respective claim, the amount paid to each such party on account of its respective claim, and a brief description of the goods or services provided by such Critical Vendor or Foreign Service Provider, as applicable, and shall provide such matrix every thirty (30) days after the first Friday after entry of this Interim Order to advisors to the Steering Committee; provided that, the Steering Committee's advisors shall keep the matrix confidential and shall not disclose any of the information in the matrix to any

party, including any member of the Steering Committee, without obtaining prior written consent of the Debtors, such consent not to be unreasonably withheld or delayed.

12. Any objection to the entry of the Final Order must be filed with the Court and served on the following parties: (i) counsel to the Debtors, Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 1285 Avenue of the Americas, New York, New York, 10019, Attention: Kelley Cornish (email: [kcornish@paulweiss.com](mailto:kcornish@paulweiss.com)) and Claudia Tobler (email: [ctobler@paulweiss.com](mailto:ctobler@paulweiss.com)) and Bradley Arant Boult Cummings LLP, One Federal Place, 1819 Fifth Avenue North, Birmingham, Alabama 35203, Attention: Jay Bender (email: [jbender@babco.com](mailto:jbender@babco.com)) and James Bailey (email: [jbailey@babco.com](mailto:jbailey@babco.com)); (ii) the Office of the Bankruptcy Administrator for the Northern District of Alabama, 1800 Fifth Avenue North, Birmingham, Alabama 35203, Attention: Jon Dudeck (email: [jon\\_dudeck@alnb.uscourts.gov](mailto:jon_dudeck@alnb.uscourts.gov)); (iii) counsel to the Steering Committee, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attention: Ira Dizengoff (email: [idizengoff@akingump.com](mailto:idizengoff@akingump.com)), Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Ave, N.W., Washington, DC 20036, Attention: James Savin (email: [jsavin@akingump.com](mailto:jsavin@akingump.com)) and Burr Forman, 420 North 20<sup>th</sup> Street, Suite 3400, Birmingham, Alabama 35203, Attention: Michael L. Hall (email: [mhall@burr.com](mailto:mhall@burr.com)) and D. Christopher Carson (email: [ccarson@burr.com](mailto:ccarson@burr.com)); (iv) counsel to the administrative agent for the Debtors' prepetition secured credit facility; (v) counsel to any statutory committee appointed in these cases; and (vi) any party that has requested notice pursuant to Bankruptcy Rule 2002, in each case to allow actual receipt by no later than 4:00 p.m. (CDT) on \_\_\_\_\_, 2015 (the "Objection Deadline").

13. The Debtors may file an omnibus reply to any objection with the Court and serve such reply via email on or before 12:00 p.m. (Central Daylight Time) on the day that is at least two business days before the date of the final hearing on the Motion.

14. If timely objections are received by the Objection Deadline there shall be a hearing on \_\_\_\_\_, 2015, at \_\_\_\_\_ (Central Daylight Time) to consider such timely objections to the Motion and the Debtors' omnibus reply.

15. Notwithstanding Bankruptcy Rule 6003, this Order shall be effective and enforceable upon entry hereof.

16. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

17. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

Dated: July [], 2015  
Birmingham, Alabama

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UNITED STATES BANKRUPTCY JUDGE



**EXHIBIT B**

**PROPOSED FINAL ORDER**

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

In re:

WALTER ENERGY, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-\_\_\_\_(\_\_\_\_)

Joint Administration Requested

Docket Ref. No. \_\_\_\_

**FINAL ORDER (A) AUTHORIZING (I) THE DEBTORS TO PAY  
PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS AND FOREIGN  
VENDORS AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS  
RELATED CHECKS AND TRANSFERS AND (B) GRANTING RELATED RELIEF**

Upon the Motion<sup>2</sup> of Walter Energy, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (each a “Debtor” and, collectively, the “Debtors”), requesting entry of interim and final orders pursuant to sections 105, 363, 503(b)(9), 506(b) and 507(a)(2) of the Bankruptcy Code and Bankruptcy Rule 6004, authorizing, but not directing, the Debtors, in their discretion, to pay the prepetition claims of certain Critical Vendors and Foreign Vendors honor and process related checks and transfers, and granting related relief; and it appearing that jurisdiction is proper pursuant to 28 U.S.C. §§ 157 and 1334; and the Interim Order having been entered by this Court; and it appearing that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: 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); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); 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); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

<sup>2</sup> All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

U.S.C. § 157(b); and it appearing that that the relief requested is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED that:

1. The Motion is GRANTED on a FINAL BASIS to the extent provided herein.
2. The Debtors are authorized, but not directed, in their sole discretion and in the reasonable exercise of their business judgment, to pay certain prepetition Critical Claims and Foreign Claims, subject to the conditions set forth in this Final Order.
3. The Final Claims Cap applicable to payment of the Critical Claims and Foreign Claims shall not exceed \$8.2 million in the aggregate unless otherwise ordered by the Court and consented to by the Steering Committee.
4. The Debtors are authorized to pay the Critical Claims and Foreign Claims in the ordinary course of business, when due and not on an accelerated basis.
5. Any vendor or service provider that accepts payment pursuant to the authority granted in this Final Order shall be deemed to (a) agree to the terms and provisions of this Final Order and (b) have waived, to the extent paid, any and all prepetition claims against the Debtors, their assets and their properties.
6. The Debtors shall undertake all appropriate efforts in the exercise of their sound business judgment to cause any applicable Critical Vendor or Foreign Vendor to enter into a trade agreement with the Debtors to provide post-petition credit on the terms which the Debtors and the applicable Vendor did business historically or such other favorable terms that the Debtors determine are in the best interest of their estates.
7. The execution of a trade agreement by the Debtors shall not be declared a waiver of any other cause of action, including any avoidance action, which may be held by the Debtors.

8. The Debtors' Disbursement Banks shall be and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay the Critical Claims and Foreign Claims, provided that sufficient funds are available in the applicable accounts to make the payments.

9. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or construed: (a) as an admission as to the validity of any claim or lien against the Debtors or their estates; (b) as a waiver of the Debtors' right to dispute any claim or lien; (c) as approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) to prejudice any of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any vendor or service provider.

10. Any payment made or to be made under this Order, and any authorization contained in this Order, shall be subject to the terms of the Interim Cash Collateral Order and related final order.

11. The Debtors shall maintain a matrix summarizing the name of each Critical Vendor and Foreign Service Provider paid on account of its respective claim, the amount paid to each such party on account of its respective claim, and a brief description of the goods or services provided by such Critical Vendor or Foreign Service Provider, as applicable, and shall provide such matrix every thirty (30) days after the first Friday after entry of this Interim Order to advisors to the Steering Committee; provided that, the Steering Committee's advisors shall keep the matrix confidential and shall not disclose any of the information in the matrix to any

party, including any member of the Steering Committee, without obtaining prior written consent of the Debtors, such consent not to be unreasonably withheld or delayed.

12. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

Dated: August [ ], 2015  
Birmingham, Alabama

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UNITED STATES BANKRUPTCY JUDGE