

**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. 15-02741-TOM11****Jointly Administered**

**DEBTORS' OBJECTION TO EMERGENCY MOTION BY DOMINION RESOURCES  
BLACK WARRIOR TRUST TO RECONSIDER, ON A LIMITED BASIS, THE CASH  
MANAGEMENT ORDER**

Walter Energy, Inc. and its affiliated debtors and debtors-in-possession (each a "Debtor") and, collectively, the "Debtors"), hereby submit this objection (the "Objection") to the Emergency Motion by Dominion Resources Black Warrior Trust To Reconsider, On a Limited Basis, The Cash Management Order (the "Motion") and in support of their Objection, respectfully state as follows:

**BACKGROUND**

1. On July 15, 2015 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), thereby commencing the instant cases (the "Chapter 11 Cases"). The Debtors continue

<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.



to manage and operate their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

2. The Debtors filed multiple “first day” motions on the Petition Date, including The Debtors’ Motion For An Order (A)(I) Approving Continued Use of the Debtors’ Existing Cash Management System, (II) Authorizing the Use of Existing Bank Accounts and Checks, (III) Waiving the Requirements of 11 U.S.C. §345(b), (IV) Granting Administrative Expense Status to Certain Postpetition Intercompany Claims, and (V) Authorizing the Continuation of Certain Intercompany Transactions; and (B) Granting Related Relief (the “Cash Management Motion”)[Dkt. No. 38].

3. The purpose of the Cash Management Motion was to obtain Court authorization to maintain the status quo of the Debtors’ integrated, centralized prepetition cash management system to efficiently administer the collection, concentration, investment, and disbursement of funds generated by the Debtors’ operations. In the Cash Management Motion, the Debtors sought to continue the Debtors’ existing cash management system exactly as it operated prepetition. The Debtors did not propose to change in any respect the manner in which funds were handled once they entered the Debtors’ cash management system.

4. By entry of an order dated July 15, 2015 (the “Cash Management Order”), the Court granted the Cash Management Motion. [Dkt. No. 60]. Consistent with the Cash Management Motion, the Cash Management Order does not alter or affect any substantive right.

5. On July 29, 2015, Dominion Resources Black Warrior Trust (“Dominion”) filed the Motion, asking the Court to reconsider the Cash Management Order and require the Debtors to segregate certain production proceeds relating to Dominion’s overriding royalty interest. The basis for Dominion’s argument that the funds should be segregated is its assertion of an

overriding royalty interest that Dominion claims is a real property interest under Alabama law, and consequently, not property of the Debtors' estate under section 541 of the Bankruptcy Code. Dominion objects to the commingling of funds in which it claims an ownership interest (as opposed to a simple contractual right to payment) with funds that belong to the Debtors.

6. The Court held a hearing on the Motion on August 3, 2015. By order dated August 4, 2015, the Court denied Dominion's Motion to the extent it sought emergency relief and reset it for hearing on August 18, 2015. [Dkt. No. 333].

### **ARGUMENT**

7. Dominion asks the Court to alter or amend the Cash Management Order under Rule 59 of the Federal Rules of Civil Procedure, as incorporated by Fed. R. Bankr. P. 9023, or to relieve it from final judgment pursuant to Fed. R. Civ. P. 60, as incorporated by Fed. R. Bankr. P. 9024. A court may alter or amend a judgment under Rule 59 to correct "manifest errors of fact or law." *Board of Commissioners of the New Orleans Levee District v. M/V Belle of New Orleans*, 439 F.Supp2d 1178 (S.D.Ala. 2006). Under Rule 60, a court may grant relief from a prior order for "any other reason that justifies relief." Dominion falls far short of demonstrating grounds for relief under either Rule. Dominion has failed to show any "manifest errors of fact or law" in the Cash Management Order that would justify altering or amending it, nor has Dominion shown any reason justifying relief from the Cash Management Order.

8. Dominion claims an overriding royalty interest ("ORRI") in certain production proceeds from the sale of gas from certain gas wells operated by Walter Black Warrior Basin ("WBWB"). Dominion asserts that the ORRI is a real property interest, and not property of the Debtors' estate, and that consequently, the cash attributable to its ORRI should not be commingled with the Debtors' funds, but segregated. Motion, ¶2. The Debtors dispute that the

ORRI is a real property interest under Alabama law and contend that it is a mere right to payment subject to impairment in chapter 11. Consequently, the Debtors maintain that the proceeds are property of the Debtors' estate under Section 541 of the Bankruptcy Code, and Dominion has nothing more than a claim against them based on a contractual right to payment.

9. But even if Dominion could show that its ORRI is a real property interest, and that it has an "ownership" interest in the subject funds, modification of the Cash Management Order is not the proper procedural vehicle for implementing the segregation that Dominion now seeks. The Cash Management Order does not alter, amend, affect or even address the substantive legal arguments Dominion seeks to put before the Court. Accordingly, Dominion is not entitled to a ruling on these substantive issues based on reconsideration of the Cash Management Order.<sup>2</sup>

10. The Cash Management Order does nothing more than maintain the Debtors' prepetition cash management system exactly as it operated prepetition. Funds handled in a particular way prepetition must under the Cash Management Order be treated the same way postpetition. Funds attributable to Dominion's ORRI were not segregated prepetition, but were deposited into an account, swept up and commingled with other funds. *See* Hrg. Tr. 21:22-24 (Aug. 3, 2015), statement by counsel for Dominion ("Nothing has changed in the way the Debtors managed the cash pre-and post, I think that's correct."). The Debtors aver this practice is consistent with the provisions of the applicable contracts between the parties and the Debtors' prepetition practice. Dominion cites no contractual provision requiring segregation and, instead, argues that the Court should infer an obligation to segregate from case law that does not expressly address the issue.

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<sup>2</sup> Although Dominion's argument that the ORRI is a real property interest under Alabama law is not properly before the Court on the Motion, the Debtors reserve all rights to respond substantively on the issue of the nature of the ORRI under Alabama law in the appropriate proceedings. *See* ¶¶14-15, below.

11. In other words, Dominion, not the Debtors, seeks to change the status quo. *See* Hrg. Tr. 21:19-24, 24:19-23 (Aug. 3, 2015)(“[THE COURT]: “So if they were not segregated pre-petition, and are not segregated post-petition, then nothing has changed. [DOMINION’S COUNSEL]: Nothing has changed in the way the Debtor managed case pre-and-post-, I think that’s correct . . .[THE COURT] So is that not what you’re asking is – I mean you want me to require the Debtors to do something different than they have been doing. [DOMINION’S COUNSEL]: That’s correct, we’re asking for something different than what they have been doing.”). The Debtors, since acquiring WBWB in 2010, have deposited these funds into its general accounts, a fact that Dominion never questioned or objected to prepetition. *See* Hrg. Tr. 21-4-18 (Aug. 3, 2015). Dominion’s Motion would be procedurally proper only if the funds owing to Dominion on account of its ORRI were segregated prepetition, or if the applicable contracts required segregation, which they do not, and the Cash Management Order provided for commingling postpetition. But those are not the facts. The Cash Management Order does nothing more than maintain the status quo with respect to the Debtors’ cash management system, including the treatment of the monthly payments received by WBWB on account of the sale of gas from its operating wells.

12. For these reasons, the Court denied the Motion on an emergency basis by order dated August 4, 2015. Dominion has advanced no new facts, circumstances, or law to justify amending the Cash Management Order. Accordingly, the Court should deny the Motion on a final basis for the same reasons it denied the Motion on an emergency basis.

13. Moreover, Dominion seeks not reconsideration of the Cash Management Order but an order affirmatively requiring the Debtors to change the existing contracts and the parties’ prepetition practice. *See* Hrg. Tr. 24:22-23 (Aug. 3, 2015)(“That’s correct, we are asking for

something different than what they have been doing.”) Altering the Cash Management Motion is not the proper procedural vehicle for obtaining an order requiring the Debtors to change their cash management procedures. The relief Dominion seeks in its Motion is in the nature of injunctive relief, which requires a commencement of a separate adversary proceeding and cannot be granted in the Cash Management Order.

14. Recognizing that its request was procedurally flawed, on August 11, 2015, Dominion filed an Original Complaint and Application for Preliminary and Permanent Injunction, thereby commencing Adversary Proceeding No. 15-00102-TOM, seeking (i) declaratory relief that its ORRI and the production proceeds attributable thereto are not property of the estate, and (ii) a preliminary injunction prohibiting the Debtors from comingling production proceeds with other funds of the Debtors, encumbering the proceeds, or refusing to make distributions to Dominion (the “AP Complaint”). While the Debtors deny and dispute the relief Dominion seeks in the AP Complaint and reserve all rights, claims, and defenses, by filing the AP Complaint, Dominion effectively concedes that it cannot obtain the relief it seeks through the Motion. In addition to being without merit, the Motion is moot.

15. Dominion filed a Motion for Temporary Restraining Order in connection with its AP Complaint (the “TRO Motion”). Responses to the TRO Motion are due on August 17, 2015. The Debtors will respond substantively on the merits of the TRO Motion and reserve all rights, claims, and defenses in connection with the TRO Motion and the AP Complaint. However, in any event, the Motion is due to be denied.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court enter an order, (i) denying the Motion, (ii) granting such other and further relief as the Court deems just and proper.

Dated: August 12, 2015  
Birmingham, Alabama

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