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

In re:	)	Chapter 11
	)	
WALTER ENERGY, INC., *et al.*	)	Case No. 15-02741-TOM11
	)	
Debtors.[1]	)	(Jointly Administered)
	)	
DOMINION RESOURCES BLACK WARRIOR TRUST, by and through its TRUSTEE, SOUTHWEST BANK, Plaintiff,	)	Adversary Proceeding No.
	)	
VS.	)	15-00102-TOM11
	)	
WALTER BLACK WARRIOR BASIN LLC Defendant.	)	

STEERING COMMITTEE'S MOTION TO INTERVENE

COMES NOW, the Steering Committee,[2] by and through its undersigned counsel, and hereby submits its motion (the "Motion") seeking an Order from this Court granting it leave to

[1]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).

[2] The "Steering Committee" means the informal group of certain unaffiliated (i) lenders under the Credit Agreement, dated as of April 1, 2011 (as amended, restated, amended and restated, waived, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Walter Energy, Inc. ("Walter Energy"), as U.S. borrower, Western Coal Corp. and Walter Energy Canada Holdings, Inc., as Canadian borrowers, the lenders from time to time party thereto, and Morgan Stanley Senior Funding, Inc., as administrative agent, and (ii) holders of the 9.50% Senior Secured Notes due 2019 (the "First Lien Notes") under the Indenture dated as of September 27, 2013 (as amended, waived, supplemented or otherwise modified from time to time) by and among Walter Energy, as issuer, the guarantors from time to time parties thereto, and Wilmington Trust, National Association, as successor trustee and collateral agent to Union Bank, N.A.

intervene in this action (the "Adversary Proceeding") and as grounds therefore, represents as follows:

I. BACKGROUND

1. On July 15, 2015, (the "Petition Date"), the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code").

2. On July 15, 2015, this Court entered 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"), [Docket No. 59].

3. On July 15, 2015, this Court entered the Order (A) (I) Approving Continued Use of the Debtors' Existing Cash Management System; (II) Authorizing 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 Order"), [Docket No. 60].

4. On August 11, 2015, Dominion Resources Black Warrior Trust (the "Trust"), by and through its Trustee, Southwest Bank (collectively, the "Plaintiffs") filed a complaint (the "Complaint") commencing the above-captioned adversary proceeding (the "Adversary Proceeding") against Walter Black Warrior Basin LLC (the "Defendant"), and seeking an order restraining Debtors from acting in accordance with the terms of the Interim Cash Collateral Order and the Cash Management Order.

II. JURISDICTIONAL STATEMENT

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper 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 basis for the relief requested herein is sections 105, 1103 and 1109 of the Bankruptcy Code.

III. ARGUMENT

A. Legal Standard for Intervention

6. Rule 7024 of the Federal Rules of Bankruptcy Procedure Rule incorporates Rule 24 of the Federal Rules of Civil Procedure, which provides, in pertinent part:

> (a) Intervention of Right. On timely motion, the court must permit anyone to intervene who . . .
>
> > (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.
>
> (b) Permissive Intervention.
>
> > (1) In General. On timely motion, the court may permit anyone to intervene who . . .
> >
> > > (B) has a claim or defense that shares with the main action a common question of law or fact.

Fed. R. Civ. P. 24. This rule "provides two vehicles by which a party may intervene in an action," intervention of right under Rule 24(a) and permissive intervention under Rule 24(b). *Nicholson v. Grieg Intern., A.S.*, No. 1:05-CV-665-KD-B, 2006 WL 3063476, at *1 (S.D. Ala. Oct. 27, 2006). "Any doubt concerning the propriety of allowing intervention should be resolved in favor of the proposed intervenors because it allows the court to resolve all related disputes in a

single action." *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 216 (11th Cir. 1993).

B. <u>The Steering Committee Is Entitled to Intervention of Right.</u>

7. In the Eleventh Circuit, a party that meets the following four requirements is entitled to intervention of right:

> (1) The application must be timely;
>
> (2) The applicant must have an interest relating to the property or transaction which is the subject of the action;
>
> (3) The applicant must be so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and,
>
> (4) The applicant must demonstrate that his interest is represented inadequately by the existing parties to the suit.

Athens Lumber Co. v. Fed. Election Comm., 690 F.2d 1364, 1366 (11th Cir. 1982). Here, the Steering Committee satisfies all of these requirements.

1. The Steering Committee's Motion Is Timely.

8. The Steering Committee meets the first element of the Eleventh Circuit's test because its Motion is timely. A court should consider four factors in determining whether a motion to intervene is timely:

> (1) The length of time during which the proposed intervenor knew or reasonably should have known of the interest in the case before moving to intervene;
>
> (2) The extent of prejudice to the existing parties as a result of the proposed intervenor's failure to move for intervention as soon as it knew or reasonably should have known of its interest;
>
> (3) The extent of prejudice to the proposed intervenor if the motion is denied; and,
>
> (4) The existence of unusual circumstances militating either for or against a determination that their motion was timely.

Georgia v. U.S. Army Corps of Engineers, 302 F.3d 1242, 1259 (11th Cir. 2002). Prejudice is the most important of the elements of timeliness. *See Diaz v. Southern Drilling Corp.*, 427 F.2d 1118 (5th Cir. 1970).

9. The instant Motion is being filed less than one week after the date the Complaint was filed. More importantly, the Steering Committee's intervention causes no prejudice to the existing parties. The Adversary Proceeding is in the earliest stage of litigation. No significant discovery has occurred, and no dispositive motion or trial deadlines have been set. *See Georgia*, 302 F.3d at 1259–60 (finding that the existing parties were not prejudiced where, even though discovery had begun, intervention did not delay proceedings and the court had not taken "significant action"). While the existing parties will suffer no prejudice by the Steering Committee's intervention, the Steering Committee could suffer significant prejudice if the Motion is denied, because, as set forth below, its interests may not be adequately represented absent intervention.

10. Since there are no "unusual circumstances" here, all timeliness factors favor the Steering Committee and the Motion is timely.

2. The Steering Committee Has An Interest Relating To The Cash Proceeds, And The Disposition Of This Action Could Impair Its Ability To Protect That Interest.

11. The Steering Committee also satisfies the second and third element required by the Eleventh Circuit. The Steering Committee is composed of entities holding a majority of the Debtors' first-lien debt who have a significant stake in the outcome of this litigation since the first-lien creditors have a first priority lien on the Debtors' cash as a result of both the First Lien Debt Documents (as defined in the Interim Cash Collateral Order) and the Interim Cash Collateral Order. In this Adversary Proceeding and elsewhere, the Trust asserts that certain cash proceeds from the Debtors' sale of gas are not estate property subject to the first-lien creditors'

liens, and should be placed in segregated accounts. The Steering Committee disputes these assertions and has argued elsewhere that these proceeds are estate property in which the first-lien creditors have superior lien rights. The Steering Committee has an interest in the property that is the subject of this action.

12. If an order in the Trust's favor were to be entered in the Adversary Proceeding, the first-lien creditors could lose their ability to protect their lien rights in the Debtors' cash. Accordingly, the Steering Committee satisfies the second and third elements of the test for intervention of right.

3. The Steering Committee's Interests Are Not Adequately Represented By The Existing Parties To This Action.

13. The Steering Committee also satisfies the final element of the Eleventh Circuit's test for intervention as a matter of right. The existing parties to the action cannot adequately represent the Steering Committee's interests. A proposed intervenor's burden to show inadequate representation is "minimal," *see Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10, (1972), *Georgia v. U.S. Army Corps of Engineers*, 302 F.3d 1242, 1255 (11th Cir. 2002), and "proposed intervenors need show only that there is a *potential* for inadequate representation." *Grutter v. Bollinger*, 188 F.3d 394, 400 (6th Cir. 1999) (emphasis added).

14. The Steering Committee more than satisfies the burden. The Trust's interests are clearly at odds with those of the Steering Committee. Also, while Defendant and the Steering Committee are of the same mind that the June Proceeds are not property of the Trust, the Steering Committee's argument goes further to take account of the first-lien creditors' liens. Defendant has no need to make this argument, and the Steering Committee cannot sit idly by and hope it will. The Steering Committee's interests thus are unlikely to be adequately represented by the existing parties to the Adversary Proceeding.

15. In sum, the Steering Committee satisfies all of Rule 24(a)'s requirements for intervention of right, and the Motion should be granted.

C. Alternatively, The Steering Committee Should be Allowed to Intervene by Permission.

16. In the alternative, the Steering Committee requests permissive intervention under Rule 24(b), which provides that "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). In determining timeliness under Rule 24(b), the court applies the same analysis and examines the same factors as are used to determine timeliness under Rule 24(a). *Walker v. Jim Dandy Co.*, 747 F.2d 1360, 1366 (11th Cir. 1984). As discussed *supra*, the Steering Committee satisfies all timeliness factors required for intervention.

17. The Steering Committee's defenses also share common questions of law and fact with the claims in this Adversary Proceeding. The Steering Committee's defenses against the Trust's claims arise with respect to the same property in dispute—the cash proceeds of Debtors' gas sales. The Trust claims they are not part of the Estate. Defendant will claim they are property of the Estate. The Steering Committee will go further and claim they are not just part of the first-lien creditors' cash collateral, but that they are also subject to the adequate protection liens set forth in the Interim Cash Collateral Order.

18. Since the Steering Committee's Motion is timely, and because its claims share common questions of fact and law with the claims in the Adversary Proceeding, this Court should permit the Steering Committee's intervention in this action under Rule 24(b).

IV. CONCLUSION

For the foregoing reasons, the Steering Committee respectfully requests that the Court enter an Order, substantially in the form of the proposed order attached hereto as Exhibit A, allowing it to intervene in this Adversary Proceeding.

Dated this the 17th day of August, 2015.

Respectfully submitted,

/s/ Michael Leo Hall

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Attorneys for the Steering Committee

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by Notice of Electronic Filing, or, if the party served does not participate in Notice of Electronic Filing, by U.S. First Class Mail or email on this the 17th day of August, 2015:

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

In re:	)	Chapter 11
	)	
WALTER ENERGY, INC., *et al.*	)	Case No. 15-02741-TOM11
	)	
Debtors.[1]	)	(Jointly Administered)
	)	
DOMINION RESOURCES BLACK WARRIOR TRUST, by and through its TRUSTEE, SOUTHWEST BANK,	)	
Plaintiff,	)	Adversary Proceeding No.
	)	
VS.	)	15-00102-TOM11
	)	
WALTER BLACK WARRIOR BASIN LLC	)	
Defendant.	)	
	)	

ORDER GRANTING STEERING COMMITTEE'S MOTION TO INTERVENE

Upon consideration of the Steering Committee's[2] Motion to Intervene (the "Motion") for entry of an order pursuant to Federal Rule 24 and Bankruptcy Rule 7024 authorizing the Steering Committee to intervene in this Adversary Proceeding as fully set forth in the Motion; and the

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Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Motion is appropriate under the circumstances; and any objections to the requested relief having been overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is **ORDERED** that:

1. The relief requested in the Motion is granted.

2. The Steering Committee is authorized to intervene in this Adversary Proceeding pursuant to Federal Rule 24, as made applicable to this Adversary Proceeding by Bankruptcy Rule 7024, and may participate in the Adversary Proceeding.

3. The Steering Committee is authorized to take any and all actions to defend and protect its interests in the Adversary Proceeding.

4. This Court shall retain jurisdiction with respect to any and all matters arising from or relating to the implementation or interpretation of this Order.

Dated: _____, 2015
Birmingham, Alabama

_____
TAMARA O. MITCHELL
United States Bankruptcy Judge