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U.S. DISTRICT COURT
N.D. OF ALABAMA

**No. 2:15-cv-01531-LSC**

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

**Dominion Resources Black Warrior Trust**
*Appellant,*

v.

**Walter Energy, Inc., *et al*.,**
*Appellees.*

On Appeal from the United States Bankruptcy Court
for the Northern District of Alabama, No. 11-02741-TOM-11

# APPELLEES' MOTION TO DISMISS THE APPEAL

Stephen J. Shimshak
Kelley A. Cornish
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000

Scott Burnett Smith
J. Patrick Darby
BRADLEY ARANT BOULT CUMMINGS LLP
1819 Fifth Avenue North
Birmingham, AL 35203-2104
Telephone (205) 521-8000

COUNSEL FOR APPELLEES WALTER ENERGY, INC., ET AL.

150274115110600000000165

**APPELLEES' MOTION TO DISMISS THE APPEAL**

Appellees Walter Energy, Inc. and its affiliated debtors and debtors-in-possession (each a "Debtor" and, collectively, the "Debtors")[1], move to dismiss the appeal filed by Dominion Resources Black Warrior Trust by and through its Trustee, Southwest Bank ("Dominion") because the order Dominion is appealing is an interlocutory order that is not subject to review.

Dominion requests review of the Bankruptcy Court's order authorizing the Debtors to continue their Cash Management System in the ordinary course of the Debtors' business.[2] *See 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*

[1] The Debtors in the underlying jointly administrated bankruptcy cases (the "Chapter 11 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 "Cash Management System" is described and defined in the *The Debtors Motion for an 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 Postpetition Intercompany Claims, and (V) Authorizing the Continuation of Certain Intercompany Transactions; and (B) Granting Related Relief* [Bankr. Docket No. 38] (the "Cash Management Motion").

*Transactions; and (B) Granting Related Relief* [Bankr. Docket No. 60, amended and restated at Bankr. Docket No. 332] (the "Cash Management Order").

The Cash Management Order is not a reviewable final order under 28 U.S.C. § 158(a) and binding Eleventh Circuit precedent. *See In re Charter Co.*, 778 F.2d 617, 622 (11th Cir. 1996) (holding cash management order is "purely interlocutory" and "not appealable as of right"). *Charter* is directly on point.

Even if the Court were to construe Dominion's notice of appeal as a petition for permission to appeal under Bankruptcy Rule 8003(d), a permissive appeal would not be appropriate. As the Eleventh Circuit explained in *Charter*, a cash management order entered early in a bankruptcy proceeding is a mechanism under 11 U.S.C. § 363(c)(1) that "merely authorize[s] the debtor to utilize a routine cash management system as has been usual and customary in the past." 778 F.2d at 621 (internal quotation omitted). It is merely an interim procedural order that does not affect substantive challenges to fund transfers under the Bankruptcy Code. *Id.* at 622. Permitting an appeal of such an interlocutory order "would merely impose another judge overseeing the bankruptcy judge and add unwarranted complexity to the case." *Id.* at 620.

Because this Court lacks appellate jurisdiction under 28 U.S.C. § 158(a), the Debtors move the Court to dismiss Dominion's appeal should be dismissed.[3]

Respectfully submitted this 17th day of September, 2015.

By: /s Scott Burnett Smith
**BRADLEY ARANT BOULT CUMMINGS LLP**
Scott Burnett Smith
Patrick Darby
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
Telephone: (205) 521-8000
Facsimile: (205) 521-8800
Email: mlembke@babc.com;
pdarby@babc.com;

***-and-***

**PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP**
Stephen J. Shimshak (*pro hac vice*)
Kelley A. Cornish (*pro hac vice*)
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
Email: sshimshak@paulweiss.com,
kcornish@paulweiss.com,

***Counsel to the Debtors and Debtors-in-Possession***

[3] The Debtors submit that the controlling Eleventh Circuit precedent of *Charter* is dispositive, but they reserve all rights, claims, defenses and arguments to challenge the appeal on other procedural or substantive grounds.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 17, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following parties:

Jamie A Wilson
BENTON & CENTENO LLP
2019 3rd Avenue North
Birmingham, AL 35203
205-278-8000
Fax: 205-278-8008
Email: jwilson@bcattys.com

Joseph E Bain
Thompson & Knight LLP
333 Clay Street, Ste 3300
Houston, TX 77002
713-654-8111
Email: joseph.bain@tklaw.com

Lee R Benton
BENTON & CENTENO LLP
2019 3rd Avenue North
Birmingham, AL 35203
205-278-8000
Fax: 205-278-3492
Email: lbenton@bcattys.com

Robert L Paddock
Thompson & Knight LLP
333 Clay Street, Ste 3300
Houston, TX 77002
713-654-8111
Email: Robert.Paddock@tklaw.com

Tye C Hancock
Thompson & Knight LLP
333 Clay Street, Ste 3300
Houston, TX 77002
713-654-8111
Email: tye.hancock@tklaw.com

/s Scott Burnett Smith
***Of Counsel***