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

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

| | | |
|---|---|---|
| DOMINION RESOURCES BLACK WARRIOR TRUST, by and through its TRUSTEE, SOUTHWEST BANK, | ) | |
| Appellant, | ) | |
| VS. | ) | Case No. 15-cv-1531-LSC |
| WALTER ENERGY, INC., et al.[1], | ) | |
| Appellees. | ) | |

**AMENDED STEERING COMMITTEE'S NOTICE OF APPEARANCE AND REQUEST FOR SERVICE OR, IN THE ALTERNATIVE, MOTION TO INTERVENE IN APPEAL**

**COMES NOW** the Steering Committee,[2] by and through its undersigned counsel, and, submits its amended[3] notice of appearance (this "Notice of Appearance") and request for service, or, in the alternative, pursuant to Rule 8013(g) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), moves this Court (the "Motion to Intervene") for an Order granting the Steering Committee leave to intervene in this appeal (the "Appeal") in order to protect its

[1] On July 15, 2015, Walter Energy, Inc. and certain of its affiliates (collectively, the "Debtors") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Alabama, Southern Division (the "Bankruptcy Court"). The Debtors' chapter 11 cases are being jointly administered under Case No. 15-02741-TOM11.

[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), 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 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.

[3] This *Amended Steering Committee's Notice of Appearance and Request for Service or, in the Alternative, Motion to Intervene in Appeal* replaces and supersedes the original version [Docket No. 6] (the "Original Notice and Motion") and should be relied upon by the Court, the parties to this Appeal (as defined below) and other parties in interest.

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interests in the Proceeds (as defined below). The Steering Committee holds over $1.4 billion of the Debtors' first-lien debt, which pursuant to section 1109(b) of the Bankruptcy Code, entitles the Steering Committee to the right to appear and be heard in the Debtors' chapter 11 cases. In exercising this right, the Steering Committee objected to the Emergency Motion to Reconsider (as defined below) filed by Dominion Resources Black Warrior Trust ("Dominion"), which sets out the arguments that serve as the basis of this Appeal. The Steering Committee also moved to intervene in the Adversary Proceeding (as defined below) filed by Dominion for reasons nearly identical to those expressed below, which motion to intervene was granted by the Bankruptcy Court. The Adversary Proceeding was subsequently voluntarily dismissed by Dominion.

Just as the Steering Committee had the right to appear and be heard on the Emergency Motion to Reconsider and Dominion's Adversary Proceeding, it has the right to appear in this Appeal without having to formally intervene in order to protect its interest in certain proceeds from the Debtors' sale of gas (the "Proceeds") that are the subject of the Appeal. However, in the event that the Court determines that the Steering Committee must formally intervene in this Appeal, the Steering Committee is alternatively filing this Motion to Intervene pursuant to Bankruptcy Rule 8013(g).

**NOTICE OF APPEARANCE AND REQUEST FOR SERVICE**

**PLEASE TAKE NOTICE** that the undersigned attorneys appear in the above-captioned appeal on behalf of the Steering Committee. The undersigned submit this Notice of Appearance and, pursuant to section 1109(b) of the Bankruptcy Code, request that all notices given or required to be given of all hearings and conferences and all papers and pleadings served or required to be served in this Appeal be delivered and served upon the Steering Committee at the address of its counsel as set forth below, and that the following names be added to the mailing matrix on file with the Clerk of the District Court as set forth below:

BURR & FORMAN LLP
Michael L. Hall
D. Christopher Carson
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
(205) 251-3000
mhall@burr.com
ccarson@burr.com

AKIN GUMP STRAUSS HAUER & FELD LLP
Ira S. Dizengoff, Esq. (*pro hac vice*)
Maurice L. Brimmage, Jr., Esq. (*pro hac vice*)
One Bryant Park
Bank of America Tower
New York, NY 10036-6745
(212) 872-1000
idizengoff@akingump.com
mbrimmage@akingump.com

AKIN GUMP STRAUSS HAUER & FELD LLP
James Savin, Esq. (*pro hac vice*)
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
(202) 887-4000
jsavin@akingump.com

**PLEASE TAKE FURTHER NOTICE** that pursuant to section 1109(b) of the Bankruptcy Code, the foregoing request includes all notices, papers and pleadings in this Appeal, together with all orders and notices of applications, motions, petitions, pleadings, demands, complaints or other documents which, in any way, affect the above-captioned Appeal.

## MOTION TO INTERVENE IN APPEAL

1. Pursuant to Bankruptcy Rule 8013(g), the Steering Committee requests that this Court enter an order, substantially in the form of the proposed order attached hereto as Exhibit A, permitting the Steering Committee to intervene in this Appeal. Under Bankruptcy Rule 8013(g), a motion to intervene in an appeal "must concisely state the movant's interest, the grounds for intervention, whether intervention was sought in the bankruptcy court, why intervention is being sought at this stage of the proceeding, and why participating as an *amicus curiae* would not be adequate." Fed. R. Bankr. P. 8013(g).

### A. The Steering Committee Appeared and Sought Intervention in the Bankruptcy Court.

2. As discussed above, the Steering Committee has previously opposed Dominion's claims to the Proceeds in both the chapter 11 cases and in the Adversary Proceeding.

3. On July 15, 2015, the Bankruptcy 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 Section 345(b) of the Bankruptcy Code; (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") [Bankr. Docket No. 60].

4. On July 29, 2015, Dominion filed the Emergency Motion by Dominion Resources Black Warrior Trust to Reconsider, on a Limited Basis, the Cash Management Order (the "Emergency Motion to Reconsider") [Bankr. Docket No. 239], requesting that the Cash Management Order be amended to include the relief that is the basis of this Appeal.

5. On August 14, 2015, the Debtors filed the Debtors' Objection to Emergency Motion by Dominion Resources Black Warrior Trust to Reconsider, on a Limited Basis, the Cash Management Order (the "Debtors' Response to Emergency Motion to Reconsider") [Bankr. Docket No. 466], objecting to Dominion's requested amendments to the Cash Management Order on the grounds that the Cash Management Order did not in any way alter the Debtors' pre-petition cash management system, or alter or affect any substantive rights. The Steering Committee joined in the Debtors' Response to Emergency Motion to Reconsider. *See* Steering Committee's Joinder in Debtors' Objection to Emergency Motion by Dominion Resources Black Warrior Trust to Reconsider, on a Limited Basis, the Cash Management Order [Bankr. Docket No. 467].

6. Also, as noted above, the Steering Committee moved to intervene in the Adversary Proceeding, and on August 24, 2015, the Bankruptcy Court granted the Steering Committee leave to intervene. *See* AP Docket No. 38.

**B. The Steering Committee's Interest in the Appeal.**

7. As set forth above, 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 Appeal 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 Final Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to Prepetition Secured Parties and (C) Granting Related Relief [Bankr. Docket No. 723] (the "Final Cash Collateral Order")) and the Final Cash Collateral Order. In this Appeal and elsewhere, Dominion asserts that the Proceeds are not property of the Debtors' estates subject to the first-lien creditors' liens and should be placed in segregated accounts. The Steering Committee disputes these assertions. Although there are many creditors of the Debtors who may be interested in the outcome of the Appeal, the first-lien creditors have a lien on the Proceeds that are the subject of, and that may be affected by, this Appeal. If Dominion prevails in this Appeal, the first-lien creditors could lose their ability to protect their liens in the Debtors' cash, including the Proceeds.

**C. Grounds for Intervention.**

8. The Steering Committee has already intervened in proceedings initiated by Dominion related to the Proceeds. On August 11, 2015, Dominion filed a complaint commencing an adversary proceeding (the "Adversary Proceeding") against one of the Debtors, Walter Black Warrior Basin LLC, Adv. Proc. No. 15-02741-TOM11, and seeking an order restraining the Debtors from acting 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 [Bankr. Docket No. 59] and the Cash Management Order.

9. On August 17, 2015, the Steering Committee filed a motion to intervene in the Adversary Proceeding [AP Docket No. 25] (the "Steering Committee's Motion to Intervene in AP"), a copy of which is attached hereto as Exhibit B, asserting that it was entitled to intervene either as a matter of right or permissively because the Steering Committee has an interest in the Proceeds. The Steering Committee was entitled to intervene in the Adversary Proceeding because, as in this Appeal, the Adversary Proceeding could have adversely affected its interest in the Proceeds and impaired the Steering Committee's ability to protect that interest. Further, neither Dominion nor the Debtors could have adequately protected the Steering Committee's distinct interest in the Proceeds. The Bankruptcy Court, therefore, properly granted the Steering Committee's Motion to Intervene in AP on the grounds stated therein. *See* AP Docket No. 38. For the reasons set forth in the Steering Committee's Motion to Intervene in AP, the Steering Committee should be granted the right to intervene in this Appeal.

**D. The Steering Committee's Intervention at the Outset of this Appeal is Appropriate.**

10. As important interests of the Steering Committee are likely to be affected by this Appeal, the Steering Committee's intervention at this stage of the Appeal is appropriate and necessary in order to timely and properly address, and be heard on, matters that would affect such interests. Moreover, given that the Appeal is in its infancy, the Steering Committee's intervention at this juncture would cause no delay or prejudice to the existing parties to this Appeal.

**E. Participating as an *Amicus Curiae* Would Not Adequately Protect the Steering Committee's Interests.**

11. The rights of an *amicus curiae* in a bankruptcy appeal are governed by Bankruptcy Rule 8017. Under Bankruptcy Rule 8017, an *amicus curiae*, as a matter of course, is only permitted to file a brief but is not permitted to file a reply brief or participate in oral argument. Fed. R. Bankr. P. 8017. As discussed above, the Steering Committee's interest in the Proceeds could be impaired depending on the outcome of the Appeal. This interest cannot be adequately protected through the Steering Committee's limited participation as *amicus curie*. Moreover, the Steering Committee's interests are unlikely to be adequately represented by the existing parties to the Appeal. First, the Steering Committee's interests are directly at odds with those of the Appellant because the two assert mutually exclusive rights to the Proceeds. Second, while the Appellees and the Steering Committee agree that the Proceeds are not property of Dominion, unlike the Appellees, the Steering Committee is focused on protecting the first-lien creditors' lien rights and property interests in the Proceeds. Without the right to fully participate in the Appeal, the Steering Committee will be unable to adequately protect these rights and interests.

## 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, and grant such other relief as is just, proper and equitable.

Dated: September 23, 2015

Respectfully submitted,

*/s/ Michael Leo Hall*

Michael Leo Hall
D. Christopher Carson

**BURR & FORMAN LLP**
420 North 20th Street, Suite 3400
Birmingham, AL 35203
Phone: (205) 251-3000
Fax: (205) 458-5100
Email: mhall@burr.com
ccarson@burr.com

and

**AKIN GUMP STRAUSS HAUER & FELD LLP**
Ira S. Dizengoff, Esq. (*pro hac vice*)
Maurice L. Brimmage, Jr., Esq. (*pro hac vice*)
One Bryant Park
Bank of America Tower
New York, NY 10036-6745
Phone: (212) 872-1000
Fax: (212) 872-1002
Email: idizengoff@akingump.com
mbrimmage@akingump.com

and

**AKIN GUMP STRAUSS HAUER & FELD LLP**
James Savin, Esq. (*pro hac vice*)
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
Phone: (202) 887-4000
Fax: (202) 887-4288
Email: jsavin@akingump.com

*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 23rd day of September, 2015:

Patrick Darby, Esq.
Jay R. Bender, Esq.
Cathleen C. Moore, Esq.
Scott B. Smith, Esq.
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203
pdarby@babc.com
jbender@babc.com
ccmoore@babc.com
ssmith@babc.com

Kelley A. Cornish, Esq.
Stephen A. Shimshak, Esq.
Ann K. Young, Esq.
Michael S. Rudnick, Esq.
Claudia Tobler, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
E-mail: kcornish@paulweiss.com
E-mail: sshimshak@paulweiss.com
E-mail: ayoung@paulweiss.com
E-mail: mrudnick@paulweiss.com
E-mail: ctobler@paulweiss.com

Lee R. Benton, Esq.
Jamie A. Wilson, Esq.
Samuel C. Stephens, Esq.
Benton & Centeno, LLP
2019 3rd Avenue North
Birmingham, AL 35203
lbenton@bcattys.com
jwilson@bcattys.com
sstephens@bcattys.com

Tye C. Hancock, Esq.
Robert L. Paddock, Esq.
Joseph E. Bain, Esq.
Thompson & Knight LLP
333 Clay Street, Suite 3300
Houston, TX 77002
tye.hancock@tklaw.com
robert.paddock@tklaw.com
joseph.bain@tklaw.com

J. Thomas Corbett
Bankruptcy Administrator
1800 5th Avenue North
Birmingham, AL 35203
jtom_corbett@alnba.uscourts.gov

*/s/ Michael Leo Hall*
OF COUNSEL

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N.D. OF ALABAMA

**Exhibit A**

**[Proposed Order]**

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

| | | |
|---|---|---|
| DOMINION RESOURCES BLACK WARRIOR TRUST, by and through its TRUSTEE, SOUTHWEST BANK, | ) | |
| Appellant, | ) | |
| VS. | ) | |
| WALTER ENERGY, INC., et al., | ) | Case No. 15-cv-1531-LSC |
| Appellees, | ) | |
| VS. | ) | |
| THE STEERING COMMITTEE, | ) | |
| Intervenor. | ) | |

**ORDER GRANTING STEERING COMMITTEE'S REQUEST TO APPEAR AND RECEIVE SERVICE OR, IN THE ALTERNATIVE, INTERVENE IN APPEAL**

This matter came on to be heard on the Amended Steering Committee's[1] Notice of Appearance and Request for Service or, in the Alternative, Motion to Intervene in Appeal (the "Notice and Motion") in the above-captioned appeal (the "Appeal") filed on September 23, 2015 as Docket No. __. The Court finds that: 1) it has jurisdiction over the matters in the Motion pursuant to 28 U.S.C. §§ 158 and 1334, 2) venue is proper in this district pursuant to 28 U.S.C.

[1] 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), 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 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.

§§ 1408 and 1409, and 3) proper notice of the Notice and Motion was given and appropriate under the circumstances.

After due deliberation and sufficient cause appearing therefor, the Court finds that the relief requested in the Notice and Motion should be granted, the Steering Committee is entitled to appear and receive service in the Appeal pursuant to 11 U.S.C. § 1109(b), and the Steering Committee is entitled to intervene pursuant to Fed. R. Bankr. P. 8013(g).

It is therefore **ORDERED** as follows:

1. The relief requested in the Notice and Motion is granted in its entirety.

2. The Steering Committee is entitled to appear and receive service in the Appeal pursuant to 11 U.S.C. § 1109(b).

3. All notices given or required to be given of all hearings and conferences, and all papers and pleadings served or required to be served in this Appeal, shall be delivered and served upon the Steering Committee at the address of its counsel as set forth below, and the following names shall be added to the mailing matrix on file with the Clerk of the District Court as set forth below:

BURR & FORMAN LLP
Michael L. Hall
D. Christopher Carson
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
(205) 251-3000
mhall@burr.com
ccarson@burr.com

AKIN GUMP STRAUSS HAUER & FELD LLP
Ira S. Dizengoff, Esq. (*pro hac vice*)
Maurice L. Brimmage, Jr., Esq. (*pro hac vice*)
One Bryant Park
Bank of America Tower
New York, NY 10036-6745
(212) 872-1000
idizengoff@akingump.com

mbrimmage@akingump.com

AKIN GUMP STRAUSS HAUER & FELD LLP
James Savin, Esq. (*pro hac vice*)
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
(202) 887-4000
jsavin@akingump.com

4. The Steering Committee is hereby authorized to intervene as the Intervenor and the style of the Appeal shall henceforth be as set forth above.

5. The Steering Committee is authorized to fully participate in the Appeal, including take any action that it deems necessary and appropriate to defend and protect its interests.

6. The Steering Committee shall have fourteen (14) days from the date of this Order to file its designation of additional items to be included in the record pursuant to Fed. R. Bankr. P. 8009(a)(2).

Dated: September __, 2015
Birmingham, Alabama

_____
L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE

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N.D. OF ALABAMA

**Exhibit B**

**[Steering Committee's Motion to Intervene in AP]**

**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. The Steering Committee Is Entitled to Intervention of Right.**

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*
Michael Leo Hall
D. Christopher Carson
Hanna Lahr

**BURR & FORMAN LLP**
420 North 20th Street, Suite 3400
Birmingham, AL 35203
Phone: (205) 251-3000
Fax: (205) 458-5100
Email: mhall@burr.com
ccarson@burr.com
hlahr@burr.com

and
**AKIN GUMP STRAUSS HAUER & FELD LLP**
Ira S. Dizengoff, Esq. (*pro hac vice*)
Lisa G. Beckerman, Esq. (*pro hac vice*)
Marty L. Brimmage, Jr., Esq. (*pro hac vice*)
Kristine G. Manoukian, Esq. (*pro hac vice*)
One Bryant Park
Bank of America Tower
New York, NY 10036-6745
Phone: (212) 872-1000
Fax: (212) 872-1002
Email: idizengoff@akingump.com
lbeckerman@akingump.com
mbrimmage@akingump.com
kmanoukian@akingump.com
and

**AKIN GUMP STRAUSS HAUER & FELD LLP**
James Savin, Esq. (*pro hac vice*)
1333 New Hampshire Avenue, N.W
Washington, DC 20036
Phone: (202) 887-4000
Fax: (202) 887-428
Email: jsavin@akingump.com

*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:

Patrick Darby, Esq.
Jay R. Bender, Esq.
Cathleen C. Moore, Esq.
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203
pdarby@babc.com
jbender@babc.com
ccmoore@babc.com

Kelley A. Cornish, Esq.
Stephen A. Shimshak, Esq.
Ann K. Young, Esq.
Michael S. Rudnick, Esq.
Claudia Tobler, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
E-mail: kcornish@paulweiss.com
E-mail: sshimshak@paulweiss.com
E-mail: ayoung@paulweiss.com
E-mail: mrudnick@paulweiss.com
E-mail: ctobler@paulweiss.com

Lee R. Benton, Esq.
Jamie A. Wilson, Esq.
Samuel C. Stephens, Esq.
Benton & Centeno, LLP
2019 3rd Avenue North
Birmingham, AL 35203
lbenton@bcattys.com
jwilson@bcattys.com
sstephens@bcattys.com

Tye C. Hancock, Esq.
Robert L. Paddock, Esq.
Joseph E. Bain, Esq.
Thompson & Knight LLP
333 Clay Street, Suite 3300
Houston, TX 77002
tye.hancock@tklaw.com
robert.paddock@tklaw.com
joseph.bain@tklaw.com

J. Thomas Corbett
Bankruptcy Administrator
1800 5th Avenue North
Birmingham, AL 35203
jtom_corbett@alnba.uscourts.gov

*/s/ Michael Leo Hall*
OF COUNSEL

**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

[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.

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



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