

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

In re:

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

DOMINION RESOURCES BLACK  
WARRIOR TRUST, by and through its  
TRUSTEE, SOUTHWEST BANK,  
Plaintiff,

V.

WALTER BLACK WARRIOR BASIN, LLC,  
Defendant.

Chapter 11

Case No. 15-02741-TOM11

Jointly Administrated

Adversary No. 15-00102-TOM

**RESPONSE IN OPPOSITION TO MOTION TO INTERVENE**  
**FILED BY STEERING COMMITTEE**

COMES NOW Dominion Resources Black Warrior Trust (“Dominion”) by and through its Trustee, Southwest Bank, hereby responds in opposition to the Steering Committee’s Motion to Intervene [Doc. #25] as follows:

1. The Steering Committee seeks to intervene in the subject litigation by claiming it has an interest related to the cash proceeds and that the disposition of this action could impair its ability to protect that interest.

<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



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Intervention as a matter of right is a tightly circumscribed mechanism through which nonparties are entitled to enter an existing action. Federal Rule of Civil Procedure 24(a)(2) imposes stringent limitations on potential intervenors because “[t]he original parties have an interest in the prompt disposition of their controversy and the public also has an interest in efficient disposition of court business.” *Fox v. Tyson Foods, Inc.*, 519 F.3d 1298, 1302 (11<sup>th</sup> Cir. 2008). A party seeking intervention of right to demonstrate that: “(1) his application to intervene is timely; (2) he has an interest relating to the property or transaction which is the subject of the action; (3) he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) his interest is represented inadequately by the existing parties to the suit.” *Stone v. First Union Corporation*, 371 F.3d 1305, 1308 (11<sup>th</sup> Cir. 2004) *Worlds v. Dept. of Health and Rehabilitative Servs.*, 929 F.2d 591, 593 (11th Cir.1991) (citing *Chiles v. Thornburgh*, 865 F.2d 1197 (11th Cir.1989)).

The Steering Committee cannot meet the second and third elements required for intervention because it cannot prove it has a current interest in the property made the subject of the adversary proceeding. If Dominion is successful in proving that the cash proceeds from the sale of Debtor’s gas is not property of the estate, the Steering Committee will not have any interest to protect. The Steering Committee can’t lose what it does not have.

**Applicant Must Demonstrate that Its Interest is Represented Inadequately by the Existing Parties to the Suit**

Because courts “presume adequate representation when an existing party seeks the same objectives as the would-be intervenors”, proposed intervenors must meet a high burden to show that the Debtor will not protect their asserted interests in continuing to argue that the sales

proceeds are property of the estate. *See Seirra Club, Inc. v. Leavitt*, 488 F.3d 904, 910 (11<sup>th</sup> Cir. 2007).

The Steering Committee is lock-step with the Debtor. It has precisely the same objection and underlying motivation as Debtor, who therefore adequately represents their interest in this litigation. Like Debtor, the Steering Committee argues that the sales proceeds are property of the estate and are subject to their alleged security interests.

**Request for Permissive Intervention**

Unlike intervention as a right under Rule 24(a), permissive intervention under Rule 24(b) explicitly requires that the Court evaluate whether intervention will cause undue delay or prejudice to the adjudication of the parties' rights. Fed.R.Civ. 24(b)(3). As set forth in the Application for Temporary Restraining Order, the relief sought by Dominion is time sensitive and it is imperative that Dominion's claims be resolved quickly so that its rights are protected. Moreover, as a practical matter, it is unduly burdensome for Dominion to respond to duplicitous discovery and pleadings. Therefore, in the interest of judicial economy, the Motion to Intervene should be denied.

BASED ON THE FOREGOING, Dominion hereby requests the Court enter an Order denying the Motion to Intervene. Dominion prays for such other and further relief as may be necessary.

Dated: August 17, 2015

Respectfully Submitted,

BENTON & CENTENO, LLP

By: /s/ Lee R. Benton

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ATTORNEYS FOR THE DOMINION RESOURCES  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of August, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM-ECF system, and served a copy of the above and foregoing, **and parties listed below** via email:

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