

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

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

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

v.

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

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

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**APPELLEES' CORRECTED  
MOTION TO DISMISS THE APPEAL**

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## **APPELLEES' CORRECTED MOTION TO DISMISS THE APPEAL**

Appellees Walter Energy, Inc. and its affiliated debtors and debtors-in-possession (each a “Debtor” and, collectively, the “Debtors”)<sup>1</sup>, 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.<sup>2</sup> *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*

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<sup>1</sup> 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).

<sup>2</sup> 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. 1985) (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 8004(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.<sup>3</sup>

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<sup>3</sup> 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 28, 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:

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