

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

	X	
In re:	:	Chapter 11
	:	
WALTER ENERGY, INC., <u>et al.</u> ,	:	Case No. 15-02741-TOM11
	:	
Debtors. ¹	:	Jointly Administered
	:	
	X	

**NOTICE OF DEBTORS' MOTION FOR AN ORDER (A) APPROVING THE
DEBTORS' KEY EMPLOYEE RETENTION PLAN AND
(B) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on November 12, 2015, Walter Energy, Inc. and its affiliated debtors and debtors-in-possession (each a “**Debtor**” and, collectively, the “**Debtors**”), by and through their undersigned counsel, filed the *Debtors’ Motion for an Order (A) Approving the Debtors’ Key Employee Retention Plan and (B) Granting Related Relief* (the “**KERP Motion**”).

PLEASE TAKE FURTHER NOTICE that objections or responses to the KERP Motion, if any, must be filed with the United States Bankruptcy Court for the Northern District of Alabama,

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). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.



15027411511120000000000008

Southern Division, and served so as to be received by the undersigned counsel on or before **December 1, 2015 at 4:00 pm (prevailing Central Time)** (the “**Objection Deadline**”).²

PLEASE TAKE FURTHER NOTICE that a hearing on the KERP Motion will be held on **December 8, 2015 at 1:30 p.m. (prevailing Central Time)** before the Honorable Tamara O. Mitchell, at the United States Bankruptcy Court for the Northern District of Alabama, Southern Division, Courtroom #3, Robert S. Vance Federal Building, 1800 Fifth Avenue North, Birmingham, Alabama 35203-2111 (the “**Bankruptcy Court**”).

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS OR RESPONSES ARE RECEIVED IN ACCORDANCE WITH THE TERMS OF THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE KERP MOTION WITHOUT FURTHER NOTICE OR HEARING.

[Remainder of Page Intentionally Left Blank]

² All deadlines and hearing dates set forth in this notice are based upon the Court’s *Order Pursuant to 11 U.S.C. §§ 102 and 105(a) and Bankruptcy Rules 2002(m) and 9007 Implementing Certain Notice and Case Management Procedures* [Docket No. 56].

Dated: November 12, 2015
Birmingham, Alabama

BRADLEY ARANT BOULT CUMMINGS LLP

By: /s/ Patrick Darby
Patrick Darby
Jay Bender
Cathleen Moore
James Bailey
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
Telephone: (205) 521-8000
Email: pdarby@babco.com, jbender@babco.com,
ccmoore@babco.com, jbailey@babco.com

- and -

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
Stephen J. Shimshak (*pro hac vice*)
Kelley A. Cornish (*pro hac vice*)
Claudia R. Tobler (*pro hac vice*)
Ann K. Young (*pro hac vice*)
Michael S. Rudnick (*pro hac vice*)
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
Email: sshimshak@paulweiss.com, kcornish@paulweiss.com,
ctobler@paulweiss.com, ayoung@paulweiss.com,
mrudnick@paulweiss.com

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

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

In re:	X	
	:	Chapter 11
	:	
WALTER ENERGY, INC., <u>et al.</u> ,	:	Case No. 15-02741-TOM11
	:	
Debtors. ³	:	Jointly Administered
	:	
	:	
	X	

**DEBTORS' MOTION FOR AN ORDER (A) APPROVING THE DEBTORS' KEY
EMPLOYEE RETENTION PLAN AND (B) GRANTING RELATED RELIEF**

The debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”), by and through their undersigned counsel, hereby submit this motion (the “**Motion**”) pursuant to sections 105, 363(b), and 503(c)(3) of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the “**Bankruptcy Code**”), and rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (each a “**Bankruptcy Rule**,” and collectively, the “**Bankruptcy Rules**”), for an order (the “**Order**”) substantially in the form attached as Exhibit A hereto (A) approving the Debtors’ key employee retention plan (the “**KERP**”), and (B) granting related relief. In support of the Motion, the Debtors respectfully represent as follows:⁴

³ 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.

⁴ The Debtors will be prepared to present evidence in support of the relief sought herein to the extent this Court deems it necessary or appropriate at the hearing on this Motion.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are in sections 105, 363(b) and 503(c)(3) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

BACKGROUND

3. On July 15, 2015 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned cases (collectively, the “**Chapter 11 Cases**”). The Debtors have continued in possession of their respective properties and to operate and maintain their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

4. On the Petition Date, this Court entered an order consolidating the Chapter 11 Cases for procedural purposes only.

5. The Bankruptcy Administrator for the Northern District of Alabama (the “**Bankruptcy Administrator**”) has appointed two official committees in the Chapter 11 Cases: a statutory committee of unsecured creditors (the “**Creditors’ Committee**”); and a committee of retired employees pursuant to Bankruptcy Code sections 1114(c)(2) and 1114(d) (the “**Section 1114 Committee**”).

6. At the beginning of this year, the Debtors were facing the prospect of running out of cash by early 2016 if the met coal market did not improve. In response, the Debtors’ advisors began negotiating with advisors to an ad hoc committee (the “**Steering Committee**”) of certain unaffiliated lenders and noteholders (the “**First Lien Creditors**”) holding a majority in amount of first lien senior secured obligations (the “**First Lien Obligations**”). The First Lien Obligations

are secured by first priority liens on substantially all of the Debtors' assets. The negotiations between the Debtors and the Steering Committee culminated in a Restructuring Support Agreement (the "**RSA**") and the terms of an agreed order approving the Debtors' use of cash collateral.

7. On the Petition Date, the Debtors filed motions to approve the assumption of the RSA [Docket No. 44] (the "**RSA Motion**") and the consensual use of cash collateral [Docket No. 42] (the "**Cash Collateral Motion**"). Several parties-in-interest objected to the relief requested in the RSA Motion and Cash Collateral Motion.

8. The Court conducted hearings on the RSA Motion and final approval of the Cash Collateral Motion on September 2-3, 2015, and thereafter entered orders approving each motion but with modifications unacceptable to the Steering Committee. *See* Docket Nos. 723 & 724. As a result, the Steering Committee filed an emergency motion requesting that the Court (a) confirm that the RSA was terminated, (b) terminate the Debtors' use of cash collateral on a nonconsensual basis, and (c) authorize the Debtors' use of cash collateral through October 21, 2015 pursuant to an amended final cash collateral order acceptable to the Steering Committee (the "**Cash Collateral Order**") [Docket No. 746] (the "**Emergency Motion**"). The Court held a hearing on the Emergency Motion on September 24, 2015 and, on September 28, 2015, entered (i) an order granting the Emergency Motion, and (ii) the Cash Collateral Order. *See* Docket Nos. 796 & 797. Pursuant to the Cash Collateral Order, the Debtors were granted the right to use cash collateral until October 21, 2015, which right was extended by agreement with the Steering Committee to November 20, 2015 [Docket No. 857].

9. The Debtors' financial condition is continuing to deteriorate and unexpected operational difficulties have exacerbated the situation. Thus, the Debtors have determined, in the

exercise of their business judgment, that the best way to maximize the value of substantially all of their assets is to sell all or substantially all of their assets through a sale(s) (the “**Sale(s)**”) pursuant to Bankruptcy Code section 363. To this end, the Debtors have executed a stalking horse agreement (the “**APA**”) with the stalking horse purchaser (the “**Stalking Horse Purchaser**”) to provide for the sale of certain assets to the Stalking Horse Purchaser (subject to higher or otherwise better bids) for, among other things, cash and a credit bid of a material portion of the First Lien Obligations and first lien adequate protection obligations, all as set forth in the stalking horse agreement and as further described in the *Debtors’ Motion for (A) an Order (I) Establishing Bidding Procedures for the Sale(s) of All, or Substantially All, of the Debtors’ Assets; (II) Approving Bid Protections; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure and Other Notices; and (V) Scheduling an Auction and a Hearing to Consider the Approval of the Sale(s); (B) Order(s) (I) Approving the Sale(s) of the Debtors’ Assets Free and Clear of Claims, Liens and Encumbrances; and (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Certain Related Relief* (the “**Sale Motion**”) [Docket No. 993].

10. The Sale(s) are intended to preserve the jobs of a substantial portion of the Debtors’ employees, relieve the estates of substantial obligations relating to such assets (including certain reclamation obligations), and reduce the estates’ liabilities through the assumption and assignment of the relevant executory contracts and/or unexpired leases.

THE KEY EMPLOYEE RETENTION PROGRAM

11. The Debtors have experienced significant employee attrition in key roles since the commencement of the Chapter 11 Cases and during the months leading up to the filing of the Chapter 11 Cases. At the outset, in response to negative market pressures, the Debtors have taken

steps to right size their workforce to match the economic realities of the industry. As such, the Debtors have already reduced operating costs to minimal levels thereby eliminating natural replacements and redundancies which in other circumstances, could normally absorb employee attrition. Specifically, the Debtors' core Alabama operations alone have suffered workforce reductions of 849 people, 673 of whom were lost due to layoffs or reductions in force, and 176 of whom (22 from corporate) left voluntarily. The employee attrition, along with the uncertainty occasioned by the Chapter 11 Cases – uncertainty that the sale process will only exacerbate – have depressed employee morale and are contributing to an increasingly untenable work environment.

12. The Chapter 11 Cases have also imposed significant additional workload on a variety of administrative functions. In addition, employees face considerable uncertainty regarding their jobs because the Stalking Horse Purchaser is not required to identify which employees it will hire under the APA until much closer to the Sale(s) closing (expected at the end of February 2016), and the hiring of employees by any other successful bidder depends on the outcome of the auction itself, which is not expected to take place until January of next year. This uncertainty also makes it more difficult for the Debtors to attract replacements. Finally, the employee attrition on top of the layoffs has resulted in the Debtors being forced to operate with extremely limited staffing, and the Debtors lack the personnel and resources at this time to absorb any additional attrition by employees in key posts. Further loss of key personnel could negatively impact the Debtors' operations and jeopardize the ability to complete the Sale(s) of the businesses as going concerns.

13. In short, the Debtors have reached a critical stage in their restructuring process, and have determined that measures must be put in place immediately to retain certain key employees either through the consummation of the Sale(s) or until a smooth operational transition to the new

owner(s) can be effected. Accordingly, the Debtors, in consultation with their advisors, have formulated the KERP to ensure that certain employees who are essential to the sale process and critical to effectively managing the Debtors' businesses are retained.

A. The Key Employees.

14. Through the selection process described below, the Debtors have identified twenty-six employees who are critical to the Debtors' continued operations and successful consummation of the Sale(s) and wind-down of the estates (the "**Key Employees**"). All of the Key Employees are director level or lower in the Debtors' organizational structure, and none are "insiders" within the meaning of section 101(31) of the Bankruptcy Code or senior management.

15. The Key Employees work at the Debtors' (a) core Alabama mines owned by Jim Walter Resources, (b) the coking operations owned by Walter Coke, and (c) in corporate headquarters. The Key Employees at Jim Walter Resources are evenly divided between the Central Mining Office and Operations. These employees are engaged in vital areas of engineering, maintenance, and longwall and prep plant operations. Many of these Key Employees have years of highly technical experience that the Debtors cannot readily or easily replace.

16. The Key Employees at Walter Coke are all responsible for the day-to-day operations of the plant. They too are highly skilled, with specialized knowledge critical to the Debtors' coking business. Moreover, maintaining continuity in the leadership roles at the plant is critical to maximizing the value.

17. Finally, the corporate employees work in the functional areas of finance, accounting, legal, human resources and transportation. These Key Employees are heavily involved in both the day-to-day support functions of the business, as well as restructuring activities.

18. A successful transition of the Debtors' assets to the Stalking Horse Purchaser or other successful bidder, and a wind-down of the remaining estates, depends on these Key

Employees staying with the businesses. Notably, although some of the Key Employees have a title of “director,” none of these Key Employees or any of the other Key Employees are “insiders.” Specifically, none of the Key Employees are *bona fide* officers or directors of the Debtors, and none of the Key Employees were appointed by the Debtors’ board of directors. As described above, all Key Employees are ones who the Debtors have identified as critical, hard to replace, non-senior management personnel.

B. The Selection Process.

19. The Debtors’ executive team engaged in a multi-tiered process for selecting the Key Employees. With input from the heads of their operational units, the executive team first identified approximately 40 employees critical to the Debtors’ organizational structure and necessary for the day-to-day operations of the Debtors’ businesses. Once identified, the executive team further evaluated each employee on the basis of “business impact” and retention. In other words, what function did each of the employees perform within the Debtors’ business and what would happen if they left? More specifically, the executive team considered, among other criteria: (i) whether an employee has unique or significant knowledge of the Debtors’ infrastructure, mining operations, business, or commercial relationships; (ii) whether the employee’s unique skills or experiences would be crucial to the Debtors’ operations and for transitioning the operations to the Stalking Horse Purchaser or other successful bidder, as applicable, or subsequent wind down of the remaining operations; (iii) whether there was a qualified internal replacement available to fill the particular Key Employee’s role; (iv) the anticipated demand for the employee’s knowledge and skill in the marketplace; and (v) the time, expense and ease of finding an adequate replacement.

20. Based on their evaluation of these criteria, among others, the executive team identified the Key Employees, those who are critical to operations and would be too costly, time

consuming or expensive to replace. The executive team divided the Key Employees into two groups: those who were needed through the consummation of the Sale(s) (the “**Group A Key Employees**”) and to assist with winding down the estates, and those who were needed for a longer period to assist the transition of the mining operations to the new owner (the “**Group B Key Employees**”). Each Group A Key Employee is eligible for a retention award if he or she stays with the business (either with his or her current employer or with a new owner of the business) through May 1, 2016. Each Group B Key Employee is eligible for a retention award if he or she stays with the business (either with his or her current employer or with a new owner of the business) through May 1, 2016, and an additional retention award if he or she stays with the business (either with his or her current employer or with a new owner of the business) through November 1, 2016. As set forth in paragraph 23 below, in certain circumstances, Key Employees may not be eligible to receive a retention award or may receive the award sooner. Once the executive team identified Key Employees and their retention needs, the nominations and the KERP were submitted to the Debtors’ Board of Directors for approval.

21. As a result of the selection process, the Debtors believe that each of the Key Employees plays a vital role in the Debtors’ chapter 11 process and possesses important experience, relationships, and familiarity with the Debtors’ operations and infrastructure that would be costly and disruptive to replace. Indeed, losing any of the Key Employees would cause the Debtors to incur significant costs in recruiting and attracting similarly qualified and experienced replacements, to the extent such replacements exist and would be willing to accept employment with a chapter 11 debtor undertaking a sale process. Loss of any of the Key Employees would negatively impact the Debtors’ business and restructuring and sale efforts. As noted above, the Debtors have already lost critical employees because of the uncertainty caused

by these Chapter 11 Cases and the transition from the RSA's reorganization path to the current sale process. The Debtors simply cannot afford to lose more employees who may be tempted to leave due to the uncertainty of the future of the Debtors' businesses. Indeed, the Debtors believe that a number of the Key Employees are seeking or have actually received other offers of employment, and the Debtors risk losing such Key Employees absent approval of the Retention Awards.

C. Terms of the Retention Plan.

22. The Debtors tailored the KERP to incentivize the Key Employees to remain with the Debtors through the completion of the Sale(s) (expected to occur in February 2016 under the APA) and to effect a smooth operational transition of the businesses to the Stalking Horse Purchaser and/or other successful bidder, as applicable, by payment of a retention award (the "**Retention Award**"). The terms of each Key Employee's Retention Award and participation in the KERP will be governed by the applicable letter agreement substantially in the form set forth in Exhibit B to the Motion (the "**KERP Agreement**").

23. The following summarizes the key terms of the KERP:⁵

- Each Group A Key Employee will receive a Retention Award if he or she remains with the business (either with his or her current employer or with a new owner of the business) through May 1, 2016.
- Each Group B Key Employee will receive a Retention Award if he or she remains with the business (either with his or her current employer or with a new owner of the business) through May 1, 2016. Each Group B Key Employee will receive an additional Retention Award if he or she remains with the business (either with his or her current employer or with a new owner of the business) through November 1, 2016.

⁵ Any references to, or summaries of, the KERP in this Motion are qualified by the express terms of the KERP as set forth in the relevant KERP Agreement signed by each Key Employee. Each executed KERP Agreement shall govern in the event of any conflict between the signed KERP Agreement and the summaries or references in this Motion.

- In certain circumstances, as set forth in the relevant KERP Agreement, the Retention Award(s) may be forfeited or accelerated depending on the Key Employee's terms of continued employment or dismissal.

D. Payment of the Retention Plan.

24. The KERP covers twenty-six Key Employees and the vast majority (88%) of the Retention Awards payable to Key Employees totals 50% of the Key Employee's annual base salary (subject to all applicable tax and withholding obligations). A small number of Key Employees are eligible to receive 100% of their annual base salary (subject to all applicable tax and withholding obligations).

25. The Debtors will pay the Retention Awards from their cash collateral, as agreed to by the Steering Committee and as permitted under the Cash Collateral Order. If the Stalking Horse Purchaser and/or other successful bidder, as applicable, extends an employment offer to a Key Employee to work for the relevant new owner, and the Key Employee accepts such offer, then the Stalking Horse Purchaser and/or the new owner, as applicable, will assume the obligation to pay such Key Employee's Retention Award to the extent unpaid. To protect against circumstances beyond the Key Employees' control, for example, if the Sale(s) does not close, a successful bidder(s) does not assume the obligations to fund the Retention Awards, or the Chapter 11 Cases are converted to cases under chapter 7 or dismissed, the Debtors will fund a trust with the amounts needed to pay the Retention Awards and administer the trust (the "**Prefunded Trust**") upon approval of the KERP by this Court. The Prefunded Trust will be self-executing and will pay the Retention Awards to the Key Employees. In the event a Key Employee forfeits his or her Retention Award(s), the forfeited amounts or any amounts remaining in the Prefunded Trust will revert to the Stalking Horse Purchaser (if the APA is approved and consummated) or to the First Lien Creditors, as applicable.

RELIEF REQUESTED

26. By this Motion, the Debtors request entry of an order pursuant to sections 105, 363(b) and 503(c)(3) of the Bankruptcy Code, and Bankruptcy Rules 2002 and 6006, approving the KERP, including the Prefunded Trust, and granting related relief. The Debtors have consulted with the Steering Committee and they do not oppose the relief requested herein.

BASIS FOR RELIEF REQUESTED

A. The KERP Constitutes a Proper Exercise of the Debtors' Business Judgment and Should be Approved Under Sections 105(a) and 363(b) of the Bankruptcy Code.

27. As described above, the Debtors structured the KERP to motivate the Key Employees to continue their increased efforts to manage and operate the Debtors, and to maximize the value of the estates, through the consummation of the Sale(s) and to facilitate the transition of the businesses to the new owner(s). Courts in this district have approved similar retention plans pursuant to sections 105 and 363(b) of the Bankruptcy Code in cases where the debtors sold substantially all of their assets. See In re Bruno's Supermarkets, LLC, Chapter 11 Case No. 09-00634-BCG, ECF No. 683 (Bankr. N.D. Al. Apr. 17, 2009); see also In re Dixie Pellets, LLC, Chapter 11 Case No. 09-05411-TOM, ECF No. 234 (Bankr. N.D. Ala. Dec. 9, 2009) (approving an employee incentive agreement under sections 105 and 363(b)).

28. Bankruptcy courts have broad authority and discretion under section 105 of the Bankruptcy Code to enforce the provisions of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

29. Section 105(a) of the Bankruptcy Code codifies the bankruptcy court's inherent equitable powers. See In re Turner, 195 B.R. 476, 479 (Bankr. N.D. Ala. 1996) (recognizing a bankruptcy court's "broad, equitable powers" under section 105(a)); Mgmt. Tech. Corp. v. Pardo (In re Mgmt. Tech. Corp.), 56 B.R. 337, 339 (Bankr. D.N.J. 1985) (relying on section 105(a) as a source of authority to resolve disputes which are not expressly addressed by other provisions of the Code). Section 105(a) "assure[s] the bankruptcy court's power to take whatever action is appropriate or necessary in aid of the exercise of [its] jurisdiction." 2 Collier on Bankruptcy, ¶ 105.01, at 105-3 (Henry J. Sommer & Alan N. Resnick eds. 16th ed. 2015). In this case, approval of the KERP ensures that value is maximized for the benefit of the Debtors' estate and creditors.

30. The KERP is also authorized under Section 363(b) of the Bankruptcy Code, which provides that the Debtors "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). The "business judgment standard" governs a court's approval of a debtor's non-ordinary course use of estate assets. See Inst. Creditors of Continental Airlines, Inc. v. Continental Airlines, Inc. (In re Continental Airlines, Inc.), 780 F.2d 1223, 1226 (5th Cir. 1986) ("[T]here must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983).

31. Here, the establishment of the KERP represents a valid exercise of the Debtors' sound business judgment. The Debtors currently lack an adequate vehicle to retain and reward Key Employees needed to remain through the consummation of the Sale(s) and effect a smooth operational transition to the Stalking Horse Purchaser and/or other successful bidder(s), as applicable. Moreover, to maximize value of the estates for the benefit of all stakeholders, the

Debtors must curb attrition and implement a program to boost employee morale and alleviate the anxiety and uncertainty caused by the bankruptcy filing and sale process. The KERP effectively achieves these important goals.

32. As discussed further below, courts commonly approve retention plans in large chapter 11 cases and similar plans (tailored to the unique facts of the case) have been adopted and approved in bankruptcy cases within this district. See In re Citation Corp., Chapter 11 Case No. 04-08130-TOM, ECF No. 577 (Bankr. N.D. Ala. Nov. 17, 2004); In re Meadowcraft, Inc., Chapter 11 Case No. 02-06910-TOM ECF No. 257 (Bankr. N.D. Ala. Feb. 4, 2003) (approving bonus and incentive plan).

B. Alternatively, the Court Should Approve the KERP Under Section 503(c)(3) of the Bankruptcy Code.

33. Section 503(c)(3) of the Bankruptcy Code also authorizes implementing the KERP. Section 503(c) of the Bankruptcy Code limits certain types of payments made to insiders and employees of the debtor during the bankruptcy case. 11 U.S.C. § 503(c). The first two subsections of 503(c) of the Bankruptcy Code apply only to insiders of the debtors, and are therefore inapplicable here, whereas section 503(c)(3) prohibits “other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.” 11 U.S.C. § 503(c)(3).

34. Because the KERP does not include insiders, section 503(c)(3) of the Bankruptcy Code provides the applicable standard for evaluating its appropriateness. The majority of courts have held that this standard is no different from the business judgment standard applied by courts in determining whether to authorize the use, sale or lease of property outside the ordinary course of business under section 363(b) of the Bankruptcy Code. See, e.g., In re Patriot Coal Corp., 492

B.R. 518, 530-31 (Bankr. E.D. Mo. 2013); In re Velo Holdings, Inc., 472 B.R. 201, 212 (Bankr. S.D.N.Y. 2012) (collecting cases); In re Global Home Prods., LLC, 369 B.R. 778, 783 (Bankr. D. Del. 2007); 4 Collier on Bankruptcy ¶ 503.17[4] (Henry J. Sommer & Alan N. Resnick eds. 16th ed. 2015); see also In re Nobex Corp., 2006 WL 4063024, at *3 (Bankr. D. Del. Jan. 19, 2006) (finding that “sale-related” incentive pay satisfied the business judgment test requirements of section 363 of the Bankruptcy Code).

35. To determine whether an incentive plan meets the business judgment standard, courts may consider the following factors:

- (a) Is there a reasonable relationship between the proposed plan and the results to be obtained, i.e., will the key employee stay for as long as it takes for the debtor to reorganize or market its assets?
- (b) Is the cost of the plan reasonable in the context of the debtor’s assets, liabilities and earning potential?
- (c) Is the scope of the plan fair and reasonable; does it apply to all employees; does it discriminate unfairly?
- (d) Is the plan or proposal consistent with industry standards?
- (e) Did the debtor engage in appropriate due diligence related to the need for the plan, i.e., did the debtor investigate which key employees needed to be incentivized and what types of plans were generally available in the debtor’s particular industry?
- (f) Did the debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation?

See In re Patriot Coal, 492 B.R. at 531 (citing In re Dana Corp., 358 B.R. 567, 576-77 (Bankr. S.D.N.Y. 2006)); In re Global Homes, 369 B.R. at 786; see also In re Allied Holdings, Inc., 337 B.R. 716, 721-22 (Bankr. N.D. Ga. 2005) (applying the business judgment standard from section 363(b) to approve a KERP); In re Friedman’s, Inc., 336 B.R. 891, 895 (Bankr. S.D. Ga. 2005) (same). Here, these factors support approval of the KERP as a sound exercise of the Debtors’ business judgment.

(i) A Reasonable Relationship Between the KERP and Retention of the Key Employees Exists.

36. The Debtors carefully structured the KERP to achieve the desired results. A debtor's retention plan is a proper exercise of business judgment when it allows the debtor to avoid the cost and delay associated with the loss of personnel and their institutional knowledge. See, e.g., In re Residential Capital, 491 B.R. 73, 85 (approving retention plan for non-insiders because of the "continuity promoted, and the institutional knowledge preserved, by the retention of such employees").

37. The Debtors cannot afford to lose the Key Employees for, among others, the following reasons:

- (a) the Key Employees are highly skilled and cannot be easily replaced;
- (b) a company in chapter 11, especially one about to undertake a transaction where continued employment is not guaranteed, is not an attractive employment option for experienced job candidates, making it difficult to retain or replace the Key Employees should they leave;
- (c) the Debtors may have to pay executive search firm fees, signing bonuses, moving expenses and higher than market salaries to induce qualified candidates to accept employment through a sale process such as the one the Debtors are pursuing;
- (d) the loss of any Key Employee may lead to additional employee departures; and
- (e) the loss of the Key Employees may jeopardize the consummation of the Sale(s) and smooth transitioning of the operations to the new owners.

38. In developing the KERP, the Debtors' executives considered a number of factors reasonably related to the retentive effect of the KERP for each of the Key Employees. These factors included:

- (a) the need to retain the Key Employee based on his or her institutional knowledge, skill and experience;

- (b) the costs associated with the KERP relative to the cost of replacing a Key Employee and the disruptive impact that losing a Key Employee would have on the business;
- (c) the role of each Key Employee in the Sale(s) process and the effect of the Chapter 11 Cases on the Key Employee's duties and responsibilities; and
- (d) the success of the Debtors' Sale(s) efforts and the success of the future operations in the hands of a successful buyer.

39. Since the Petition Date, the Debtors have lost a number of valuable administrative and operational personnel, and have been forced to lay off hundreds of employees due to liquidity and market pressures. The Debtors now function with a very lean staff and cannot afford to suffer further attrition. By paying the Key Employees the Retention Award if they remain with the business for the next six or twelve months, the KERP reduces the uncertainty among the Key Employees and provides them with an incentive to remain with the Debtors through the consummation of the Sale(s) and, in some cases, to transition the operations to the new owner and assist with winding down the remaining estates. The KERP is thus structured to promote continuity and preserve institutional knowledge to facilitate the success of the Chapter 11 Cases.

(ii) The Cost of the KERP is Reasonable in Relation to the Debtors' Assets and Liabilities.

40. The cost of the KERP is reasonable in relation to the Debtors' assets and the benefits that will be obtained. The Debtors' core assets comprise some of the deepest mines in the U.S., the safe operation of which depends on highly skilled, specialized knowledge of the particular mines. Similarly, the coking operations require technical knowledge and familiarity with the particular furnaces and operating conditions unique to the plant. The Debtors have identified twenty-six (26) employees out of their work force that are absolutely critical to the continued safe and successful operation of these businesses. In fact, the costs of the KERP constitute a fraction of the Debtors' total liabilities. The costs associated with losing and replacing

the Key Employees, on the other hand – and the damage the loss of these employees could inflict on the value of the Debtors’ businesses – would far exceed the cost of the KERP.

(iii) The Scope of the KERP is Fair and Reasonable.

41. As discussed above, the Debtors’ executive team followed a multi-tiered process to identify the Key Employees and the appropriate Retention Award amounts. The Debtors’ due diligence efforts included considering, among other things, whether any current employee was critical to the Debtors’ operations and essential for purposes of carrying out the day-to-day operations of the Debtors’ mining and coking businesses, the leadership provided by the Key Employee to the particular operations, whether the employee had critical institutional knowledge or commercial relationships, whether the employee was the only one (or one of only a few) with that knowledge, and the employee’s role in consummating the Sale(s) and transitioning the operations to a new owner. In this manner, the Debtors considered numerous employees and properly limited participation in the KERP to the Key Employees.

(iv) The KERP is Consistent with Industry Standards.

42. The KERP comports with industry standards and falls within the range of competitive practice. The Debtors’ executive team – none of whom will receive any Retention Awards under the KERP – developed the KERP. In addition, prior to submitting the KERP for approval by this Court, the Debtor’s investment banker, PJT Partners LLC (“PJT Partners”) reviewed the KERP and the amounts paid thereunder for purposes of comparing it to other similar programs courts have approved in comparable cases. Based on that review, PJT Partners concluded that the KERP’s cost of approximately \$2.0 million falls within the range of reasonableness and within the market range of comparable plans.

* * * * *

43. In sum, the Debtors respectfully submit that the KERP is a sound exercise of the Debtors' business judgment, is justified by the facts and circumstances of the Chapter 11 Cases, and that implementation of the KERP is in the best interests of the Debtors, their estates, creditors and other stakeholders.

NOTICE

44. Notice of this Motion will be provided to: (i) counsel to the administrative agent for the Debtors' prepetition secured credit facility; (ii) counsel for the indenture trustee for each of the Debtors' outstanding bond issuances; (iii) counsel to the Steering Committee; (iv) counsel to the Creditors Committee; (v) counsel to the Section 1114 Committee; (vi) the Bankruptcy Administrator; and (vii) all persons and entities that have filed a request for service of filings in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, no other or further notice is necessary.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested in this Motion and grant the Debtors such other and further relief as this Court deems just and proper.

Dated: Birmingham, Alabama
November 12, 2015

BRADLEY ARANT BOULT CUMMINGS LLP

By: /s/ Patrick Darby
Patrick Darby
Jay Bender
Cathleen Moore
James Bailey
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
Telephone: (205) 521-8000
Email: pdarby@babc.com, jbender@babc.com,
ccmoore@babc.com, jbailey@babc.com

- and -

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
Stephen J. Shimshak
Kelley A. Cornish
Claudia R. Tobler
Diane Meyers
Ann K. Young
Michael S. Rudnick
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
Email: sshimshak@paulweiss.com,
kcornish@paulweiss.com,
ctobler@paulweiss.com,
dmeyers@paulweiss.com,
ayoung@paulweiss.com,
mrudnick@paulweiss.com,

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

EXHIBIT A
PROPOSED ORDER

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

In re:

WALTER ENERGY, INC., *et al.*,⁶

Debtors.

Chapter 11

Case No. 15-02741-TOM11

Jointly Administered

**ORDER (A) APPROVING THE DEBTORS' KEY EMPLOYEE RETENTION PLAN
AND (B) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)⁷ of the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”), pursuant to sections 105, 363(b), and 503(c)(3) of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the “**Bankruptcy Code**”), and rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (each a “**Bankruptcy Rule**,” and collectively, the “**Bankruptcy Rules**”), for an order (A) approving the Debtors’ key employee retention plan (the “**KERP**”) and (B) granting related relief; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding

⁶ 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.

⁷ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

pursuant to 28 U.S.C. § 157(b); and it appearing that adequate and proper notice of the Motion has been given and that no other or further notice need be given; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and all parties in interest; and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED, ADJUDGED and DECREED that:

1. The Motion is GRANTED.
2. The KERP is approved in its entirety.
3. The Debtors are authorized to create the Prefunded Trust and transfer \$2,015,234 into the Prefunded Trust for, subject to the KERP and terms of the Prefunded Trust, the express purpose of paying the Retention Award to the Key Employees and the costs of administering the Prefunded Trust. The Key Employees shall constitute the only beneficiaries of the Prefunded Trust. Once funded, the Prefunded Trust and its assets are not property of the Debtors' estates and neither the Prefunded Trust nor its assets shall be subject to claims of the Debtors' creditors, successors or assigns, including any trustee appointed in these Chapter 11 Cases or in any Chapter 7 case if the Chapter 11 Cases are converted.
4. The Debtors are authorized to take all actions necessary to implement the KERP on the terms and conditions set forth in the Motion and the KERP Agreement.
5. Notice of the Motion as provided therein shall be deemed good and sufficient notice of the Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules for the Northern District of Alabama, Southern Division, are satisfied by such notice.
6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2015

TAMARA O. MITCHELL
UNITED STATES BANKRUPTCY
JUDGE

EXHIBIT B

FORM OF KERP AGREEMENT

November [XX], 2015

Dear [_____],

I am very pleased to report that our Board of Directors has approved you for a special \$[_____] retention award (the "Award") to acknowledge your exceptional work and critical role in Walter Energy's restructuring efforts and to give you an added incentive to help us through our next chapter. You are critical to our transition and play a valuable part of the future of our company.

Here are the details:

I. How does the Award work?

You will be paid your Award if you continue employment with Walter Energy, Inc. or its subsidiaries ("Walter") or a purchaser (the "Purchaser") of the relevant Walter assets through May 1, 2016. In certain cases, as described below, the Award can be paid sooner. The Award will be payable in a cash lump sum (subject to applicable tax withholding).

II. What if my employment terminates before I'm paid?

If, before May 1, 2016, you (a) are fired without Cause; (b) quit for Good Reason; or (c) die or become Disabled while employed, then your Award will be earned and payable by Walter upon the occurrence of one of the events in (a) through (c). For purposes of this letter, "Cause," "Good Reason" and "Disabled" shall have the meanings in the annex to this letter.

III. Can I lose the Award?

Yes. You will forfeit the Award completely if, before May 1, 2016, you are fired for Cause or you quit without Good Reason.

IV. When is the Award paid?

If earned, the Award will be paid on or within 30 days following (i) May 1, 2016 or (ii) such other earlier payment date identified in this letter.

V. What happens if the company is sold?

As I'm sure you know, Walter has entered into an agreement to sell a substantial portion of its assets through a competitive bidding process, subject to Bankruptcy Court approval. If you are offered employment by the relevant Purchaser and remain employed through May 1, 2016, then your Award will be earned and paid on May 1, 2016 or within 30 days thereafter. If you receive an offer of comparable employment with the relevant Purchaser but do not accept it, then you will forfeit your Award.

If you do not receive an offer of comparable employment by the relevant Purchaser, then your Award will be earned and paid upon the closing of the sale subject to your continued employment with Walter through that date, or any earlier payment date identified in section II above.

VI. Does the Bankruptcy Court need to approve the Award? What happens if the Bankruptcy Court does not approve?

Yes, the Bankruptcy Court needs to approve the Award. If the Bankruptcy Court does not approve our proposed retention award program, then the Award will not be paid.

VII. Walter is in bankruptcy. How do I know that I'm going to get paid?

We are making provisions to set aside the cash to pay your Award when due.

VIII. What other conditions apply to the Award?

Subject to applicable law, you must keep the terms of this letter confidential, including the existence of the Award, our retention program, and the amount of your Award.

IX. What are the rules of interpretation for this letter?

The Human Resources Department of Walter Energy, Inc. has authority to administer your Award and to interpret the terms and conditions of this letter. This letter constitutes the entire agreement between Walter and you with respect to the Award and supersedes any prior discussions or agreements. The U.S. Bankruptcy Court for the Northern District of Alabama, in which Walter's bankruptcy cases are currently pending, will be the exclusive jurisdiction for the purposes of any suit, action or other proceeding arising out of or relating to this letter. This letter will be governed by and construed and interpreted in accordance with the laws of the State of Alabama, applied without reference to its principles of conflict of laws, except to the extent governed by the Bankruptcy Code. It is the intent of the parties that this letter and any payment hereunder comply with Section 409A of the Internal Revenue Code of 1986, as amended.

* * * * *

During the coming months, we will continue to communicate with you about Walter's financial restructuring and sale process, as well as the Bankruptcy Court's decision. If you have any questions, please reach out to Kelli Gant, Vice President of Human Resources (kelli.gant@walterenergy.com).

Please indicate your agreement to these terms and conditions by signing below and returning your signed original to Kelli Gant. You should keep a copy for your files.

Very truly yours,

[Walter J. Scheller, III]
[Chief Executive Officer]

Accepted and Agreed:

[Employee Name]

Date

Definitions of Cause, Good Reason and Disabled

"Cause" shall mean:

- (i) your failure to perform your duties (other than any such failure resulting from incapacity due to physical or mental illness);
- (ii) your continuous failure to comply with any valid and legal directive of the individual to whom you report;
- (iii) your engagement in dishonesty, illegal conduct or gross misconduct; or
- (iv) your conviction of or plea of guilty or *nolo contendere* to a crime that constitutes a felony (or state law equivalent) or a crime that constitutes a misdemeanor involving moral turpitude.

"Good Reason" shall mean the occurrence of any of the following, in each case without your written consent:

- (i) a reduction in your base salary, unless such reduction occurs in connection with a reduction in base salary applied generally to employees at your level; or
- (ii) a relocation of your principal place of employment by more than 75 miles.

Your resignation will qualify for "Good Reason" only if (a) you first provide written notice to Walter of the occurrence of (i) or (ii) above, and Walter fails to cure the occurrence within three business days following its receipt of such notice, and (b) the effective date of your resignation occurs within 30 days following the occurrence of (i) or (ii) above.

"Disabled" shall mean that you are deemed "disabled" under the default rules of Treasury Regulation §1.409A-3(i)(4)(i).

November [XX], 2015

Dear [_____],

I am very pleased to report that our Board of Directors has approved you for a special \$[_____] retention award (the "Award") to acknowledge your exceptional work and critical role in Walter Energy's restructuring efforts and to give you an added incentive to help us through our next chapter. You are critical to our transition and play a valuable part of the future of our company.

Here are the details:

I. How does the Award work?

You will be paid 50% of your Award if you continue employment with Walter Energy, Inc. or its subsidiaries ("Walter") or a purchaser (the "Purchaser") of the relevant Walter assets through May 1, 2016. The remaining 50% will be paid if you continue employment with Walter or the Purchaser through November 1, 2016. In certain cases, as described below, the Award can be paid sooner. Each installment will be payable in a cash lump sum (subject to applicable tax withholding).

II. What if my employment terminates before I'm paid?

Your Award can be earned and paid out earlier if, before November 1, 2016, you (a) are fired without Cause; (b) quit for Good Reason; or (c) die or become Disabled while employed. If such a termination occurs before May 1, 2016, 100% of your Award will be earned and payable by Walter as of such termination of employment. If such a termination occurs on or after May 1, 2016 but before November 1, 2016, the remaining unpaid 50% installment of your Award will be earned and payable as of such termination of employment by your employer at such time. For purposes of this letter, "Cause," "Good Reason" and "Disabled" shall have the meanings in the annex to this letter.

III. Can I lose the Award?

Yes. You will forfeit the Award completely if, before May 1, 2016, you are fired for Cause or you quit without Good Reason. If you are fired for Cause or you quit without Good Reason on or after May 1, 2016 but before November 1, 2016, then you will forfeit the remaining unpaid 50% installment of your Award.

IV. When is the Award paid?

If earned, your Award (or relevant portion of your Award) will be paid on or within 30 days following the relevant payment date identified in this letter.

V. What happens if the company is sold?

As I'm sure you know, Walter has entered into an agreement to sell a substantial portion of its assets through a competitive bidding process, subject to Bankruptcy Court approval. If you are offered employment by the relevant Purchaser and remain employed through May 1, 2016, then the portion of your Award that would otherwise be due on May 1, 2016 will be earned and paid out on May 1, 2016 or within 30 days thereafter, and the portion of your Award that would otherwise be due on November 1, 2016 will be earned and payable if you continue employment with the Purchaser through November 1, 2016. If you receive an offer of comparable employment with the relevant Purchaser but do not accept it, then you will forfeit your Award.

If you do not receive an offer of comparable employment by the relevant Purchaser, then your Award will be earned and paid upon the closing of the sale subject to your continued employment with Walter through that date, or any earlier payment date identified in section II above.

VI. Does the Bankruptcy Court need to approve the Award? What happens if the Bankruptcy Court does not approve?

Yes, the Bankruptcy Court needs to approve the Award. If the Bankruptcy Court does not approve our proposed retention award program, then the Award will not be paid.

VII. Walter is in bankruptcy. How do I know that I'm going to get paid?

We are making provisions to set aside the cash to pay your Award and/or for Purchaser in connection with a sale to assume the obligation to pay your Award when due.

VIII. What other conditions apply to the Award?

Subject to applicable law, you must keep the terms of this letter confidential, including the existence of the Award, our retention program, and the amount of your Award.

IX. What are the rules of interpretation for this letter?

The Human Resources Department of Walter Energy, Inc. has authority to administer your Award and to interpret the terms and conditions of this letter. This letter constitutes the entire agreement between Walter and you with respect to the Award and supersedes any prior discussions or agreements. The U.S. Bankruptcy Court for the Northern District of Alabama, in which Walter's bankruptcy cases are currently pending, will be the exclusive jurisdiction for the purposes of any suit, action or other proceeding arising out of or relating to this letter. This letter will be governed by and construed and interpreted in accordance with the laws of the State of Alabama, applied without reference to its principles of conflict of laws, except to the extent governed by the Bankruptcy Code. It is the intent of the parties that this letter and any payments hereunder comply with Section 409A of the Internal Revenue Code of 1986, as amended.

* * * * *

During the coming months, we will continue to communicate with you about Walter's financial restructuring and sale process, as well as the Bankruptcy Court's decision. If you have any questions, please reach out to Kelli Gant, Vice President of Human Resources (kelli.gant@walterenergy.com).

Please indicate your agreement to these terms and conditions by signing below and returning your signed original to Kelli Gant. You should keep a copy for your files.

Very truly yours,

[Walter J. Scheller, III]
[Chief Executive Officer]

Accepted and Agreed:

[Employee Name]

Date

Definitions of Cause, Good Reason and Disabled

"Cause" shall mean:

- (i) your failure to perform your duties (other than any such failure resulting from incapacity due to physical or mental illness);
- (ii) your continuous failure to comply with any valid and legal directive of the individual to whom you report;
- (iii) your engagement in dishonesty, illegal conduct or gross misconduct; or
- (iv) your conviction of or plea of guilty or *nolo contendere* to a crime that constitutes a felony (or state law equivalent) or a crime that constitutes a misdemeanor involving moral turpitude.

"Good Reason" shall mean the occurrence of any of the following, in each case without your written consent:

- (i) a reduction in your base salary, unless such reduction occurs in connection with a reduction in base salary applied generally to employees at your level; or
- (ii) a relocation of your principal place of employment by more than 75 miles.

Your resignation will qualify for "Good Reason" only if (a) you first provide written notice to Walter of the occurrence of (i) or (ii) above, and Walter fails to cure the occurrence within three business days following its receipt of such notice, and (b) the effective date of your resignation occurs within 30 days following the occurrence of (i) or (ii) above.

"Disabled" shall mean that you are deemed "disabled" under the default rules of Treasury Regulation §1.409A-3(i)(4)(i).