

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

<p>In re:</p> <p>WALTER ENERGY, INC., <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 15-02741-TOM11</p> <p>Jointly Administered</p>
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**NOTICE OF MOTION FOR AN ORDER MODIFYING THE AUTOMATIC STAY
TO PROCEED WITH WORKERS' COMPENSATION
AND BLACK LUNG CLAIMS AND ACTIONS**

PLEASE TAKE NOTICE that on July 28, 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 *Motion for on Order Modifying the Automatic Stay to Proceed with Workers' Compensation and Black Lung Claims and Actions* (the "Motion").

PLEASE TAKE FURTHER NOTICE that objections or responses to the Motion, if any, must be filed with the United States Bankruptcy Court for the Northern District of Alabama, Southern Division, and served so as to be received by the undersigned counsel on or before **August 13, 2015** (the "Objection Deadline").²

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.

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].



PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **August 18, 2015 at 10:00 a.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 MOTION WITHOUT FURTHER NOTICE OR HEARING.

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Dated: July 28, 2015
Birmingham, Alabama

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

In re:

WALTER ENERGY, INC. *et al.*,¹

Debtors.

Chapter 11

Case No. 15-02741-TOM11

Jointly Administered

**MOTION FOR AN ORDER MODIFYING THE AUTOMATIC STAY TO PROCEED
WITH WORKERS' COMPENSATION AND BLACK LUNG CLAIMS AND ACTIONS**

Walter Energy, Inc. and its affiliated debtors and debtors-in-possession (each a “Debtor” and, collectively, the “Debtors” and, together with its non-Debtor subsidiaries, the “Company”) hereby move this Court for entry of an order substantially in the form attached hereto as Exhibit A (the “Proposed Order”), pursuant to section 362(d) of title 11 of the United States Code (the “Bankruptcy Code”), rules 4001(a) and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 4001-1 of the Local Rules of the United States Bankruptcy Court for the Northern District of Alabama (the “Local Rules”) (a) modifying the automatic stay under section 362(a) of the Bankruptcy Code solely to the extent necessary to allow workers’ compensation and “Black Lung” claims and actions to proceed in the ordinary course of business, (b) waiving the fourteen (14) day stay imposed by Bankruptcy Rule 4001(a)(3), and (c) granting related relief. In support of this Motion, 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). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

Debtors rely on the *Declaration of William G. Harvey in Support of First Day Motions* [Docket No. 3] (the “First Day Declaration”) and respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b).

2. The statutory and legal predicates for the relief requested herein is section 362(d) of the Bankruptcy Code, Bankruptcy Rules 4001(a) and 9014, and Local Rule 4001-1.

BACKGROUND

3. On July 15, 2015 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, thereby commencing the instant cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee, examiner, or official committee has been appointed in the Chapter 11 Cases.

5. Information regarding the Debtors’ businesses, their capital and debt structure and the events leading to the filing of the Chapter 11 Cases is contained in the First Day Declaration.

THE WORKERS’ COMPENSATION AND BLACK LUNG CLAIMS

6. By this motion, the Debtors request modification of the automatic stay under section 362(a) of the Bankruptcy Code solely to the extent necessary to allow workers’ compensation and “Black Lung” claims and actions to proceed in the ordinary course of business.

7. The Debtors are required to maintain workers’ compensation liability insurance and to provide their employees with workers’ compensation coverage for claims arising from or

related to their employment with the Company. The Debtors provide workers' compensation benefits through (a) three self-insured retention policies at various Debtors (collectively, the "SIR Policies") and (b) two primary workers' compensation policies placed with third-party insurers: one policy for Walter Minerals, WBWB and Walter Energy, and one policy for the Black Warrior Companies (collectively, the "Primary WC Policies"). As of December 31, 2014, the Debtors had approximately 700 open claims (collectively, the "Workers' Compensation Claims") and the obligations related thereto, the "Workers' Compensation Obligations") and have reserved for accounting purposes approximately \$44 million in the aggregate on account of accrued and unpaid claims under the Primary WC Policies and SIR Policies.

8. On the Petition Date, the Court entered the *Order (A) Authorizing, but not Directing, the Debtors to Pay Certain Prepetition Wages, Compensation, Workers Compensation and Employee Benefits and to Maintain Employee Benefit Programs and Pay Related Administrative Obligations; (B) Authorizing and Directing Applicable Banks and Other Financial Institutions to Process and Pay All Checks Presented for Payment and to Honor All Funds Transfer Requests Made by the Debtors Relating to the Foregoing; and (C) Granting Related Relief* [Docket No. 61] (the "Wages Order").²

9. Among other things, the Wages Order granted the Debtors authority (a) to continue and maintain their workers' compensation programs, and (b) in the reasonable exercise of the Debtors' business judgment and in the ordinary course of business, to pay and honor the Workers' Compensation Obligations, which include, without limitation, costs incurred in

² Capitalized terms that are not defined herein shall have the meanings provided in the Wages Order.

connection with the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 901 *et seq.* (the “Black Lung Benefits Act” and the claims thereunder, the “Black Lung Claims”).³

10. The Debtors’ commencement of the Chapter 11 Cases triggered the automatic stay and prevents the processing of the Workers’ Compensation Claims and Black Lung Claims. As it is unclear if the Wages Order provides the necessary relief from the automatic stay, the Debtors have filed this Motion to request modification of the automatic stay to allow continued adjudication and processing of these types of claims in the ordinary course of their business.

BASIS FOR RELIEF REQUESTED

11. The automatic stay provisions of section 362(a) of the Bankruptcy Code operate to stay, among other things:

[T]he commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1).

12. Section 362(d)(1), however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” 11 U.S.C. § 362(d)(1).

13. Cause exists here to modify the automatic stay to allow the Workers’ Compensation Claims and Black Lung Claim to move forward in the ordinary course of the Debtors’ business. *First*, the Wages Order already grants the Debtors the authority to continue

³ The Wages Order also granted the Debtors authority to post cash collateral to secure their obligations to governmental regulators and agencies under the SIR Policies or otherwise maintain the Debtors’ workers’ compensation policies, with the consent of the Steering Committee. With the consent of the Steering Committee and in accordance with the Wages Order, the Debtors have agreed to post \$15 million in cash by August 18, 2015 with the State of Alabama Department of Labor to collateralize the Debtors’ workers’ SIR Policies and Workers’ Compensation Programs.

paying or contesting in good faith, as appropriate in the Debtors' business judgment, all outstanding amounts related to their Workers' Compensation Obligations and to fully administer and comply with the Debtors' workers' compensation programs, as such amounts become due in the ordinary course of the Debtors' businesses. Indeed, the failure to comply with the Debtors' workers' compensation insurance obligations could result in the institution of administrative or legal proceedings and material fines against the Debtors and their officers and directors. Without modifying the automatic stay, the Debtors cannot continue and maintain their workers' compensation programs and fully pay and honor the Workers' Compensation Obligations in the ordinary course of business, as authorized by the Wages Order. Moreover, the Debtors' failure to honor their Workers' Compensation Obligations exposes them to potential violations of state law which, among other things, would jeopardize their mining permits.

14. *Second*, staying the Workers' Compensation Claims and Black Lung Claims may have a detrimental effect on the financial and medical well-being of the Debtors' Employees. Denying these benefits to Employees will damage Employee morale and potentially lead to Employee departures, which could cause a severe disruption in the Debtors' businesses.

15. Other courts have modified the automatic stay to allow workers' compensation claims and actions to proceed in the appropriate forum in similar circumstances. See, e.g., In re Patriot Coal Corp., Case No. 15-32450 (KLP), ECF No. 243 (Bankr. E.D. Va. June 4, 2015) (order granting debtors' motion seeking, among other things, modification of the automatic stay to allow workers' compensation claims to proceed in the appropriate judicial or administrative forum); In re James River Coal Co., Case No. 14-31848 (KRH), ECF No. 211 (Bankr. E.D. Va. May 7, 2014) (same); In re Patriot Coal Corp., Case No. 12-12900 (SCC), ECF No. 253 (Bankr. S.D.N.Y. Aug. 2, 2012) (same), *subsequently transferred to* Bankr. E.D. Mo., Case No. 12-

51502-659. The circumstances of the Chapter 11 Cases warrant granting similar relief, and doing so is in the best interests of the Debtors, their estates and creditors.

16. The Debtors also seek an order waiving the fourteen (14) day stay of Bankruptcy Rule 4001(a)(3). The Debtors have hundreds of open Workers' Compensation Claims, some of which have already been put on administrative status as a result of the Debtors' chapter 11 filing. No reason exists to further delay processing these claims.⁴

NOTICE

17. Notice of this Motion will be provided to: (i) counsel to the 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) the holders of the fifty (50) largest unsecured claims against the Debtors, on a consolidated basis; and (v) 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]

⁴ The Debtors do not seek by this Motion a waiver, termination, or modification of the automatic stay with respect to any other claims or actions.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as Exhibit A, granting the requested relief and such other and further relief as it deems just and proper.

Dated: July 28, 2015
Birmingham, Alabama

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*Proposed Counsel to the Debtors and
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EXHIBIT A
PROPOSED ORDER

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

In re:

WALTER ENERGY, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 15-02741-TOM11

Jointly Administered

**ORDER MODIFYING THE AUTOMATIC STAY TO PROCEED
WITH WORKERS' COMPENSATION AND BLACK LUNG CLAIMS AND ACTIONS**

Upon consideration of the motion (the "Motion")² of Walter Energy, Inc. and its affiliated debtors and debtors-in-possession (each a "Debtor" and, collectively, the "Debtors"), pursuant to section 362(d) of the Bankruptcy Code, Bankruptcy Rules 4001(a) and 9014, and Local Rule 4001-1, requesting entry of an Order (a) modifying the automatic stay under section 362(a) of the Bankruptcy Code solely to the extent necessary to allow workers' compensation and "Black Lung" claims and actions to proceed in the ordinary course of business, (b) waiving the fourteen (14) day stay imposed by Bankruptcy Rule 4001(a)(3), and (c) granting related relief, all as more fully described in the Motion; 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

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² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

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 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 that:

1. The Motion is GRANTED.
2. Section 362(a) of the Bankruptcy Code is modified solely to the extent necessary to allow Workers' Compensation Claims and Black Lung Claims and actions to proceed in the ordinary course of business in the appropriate judicial or administrative forum.
3. Section 362(a) of the Bankruptcy Code remains in full force and effect with respect to all other claims, litigations, or actions and this Order does not waive, terminate, or otherwise modify the automatic stay with respect thereto.
4. This Order is effective and enforceable immediately upon entry. The fourteen-day stay provided by Bankruptcy Rule 4001(a)(3) is hereby waived.
5. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: August __, 2015

THE HONORABLE TAMARA O. MITCHELL
UNITED STATES BANKRUPTCY JUDGE