

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
of Westmoreland Coal Company, et al.**

Chapter 11 Case No. 18-35672 (DRJ)  
In the United States Bankruptcy Court  
for the Southern District of Texas

c/o Morrison & Foerster LLP  
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**To: Holders of General Unsecured Claims**

The Official Committee of Unsecured Creditors (the “Committee”) was appointed by the United States Trustee to represent the interests of all unsecured creditors in the chapter 11 bankruptcy cases of Westmoreland Coal Company and its debtor subsidiaries (the “Debtors”). We write to advise you of the Committee’s position regarding the *Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates* (the “Plan”) filed by the WLB Debtors.<sup>1</sup> The Plan is described in, and is attached as an exhibit to, the accompanying *Disclosure Statement for Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates* (the “Disclosure Statement”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan or Disclosure Statement, as applicable.

**The Committee strongly urges all unsecured creditors to vote to REJECT the Plan and to OPT OUT of the third-party releases set forth in Article IX.E of the Plan.** Detailed instructions regarding how to vote on the Plan and opt out of the third-party releases are contained on your ballot (the “Ballot”), which is enclosed in the same package as this letter. In order to vote on the Plan or opt out of the third-party releases, you must return your Ballot so that it is actually received by the Notice & Claims Agent on or before January 25, 2019 at 4:00 p.m., prevailing Central Time (the “Voting Deadline”).<sup>2</sup>

The Committee believes that you should vote to reject the Plan (and the Plan cannot be approved by the Bankruptcy Court) for the following reasons:

- **The Plan provides you with no recovery.** Under the Bankruptcy Code, unsecured creditors are entitled to receive a *pro rata* share of the value of estate claims and unencumbered assets after priority and administrative claims are paid in full. The Committee’s advisors are currently investigating a number of prepetition transactions

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<sup>1</sup> The term “WLB Debtors” does not include Westmoreland Resource Partners GP, LLC or Westmoreland Resource Partners, LP and its subsidiaries.

<sup>2</sup> Please note, if the Auction occurs after January 22, 2019, the Voting Deadline will be automatically extended through 4:00 p.m., prevailing Central Time, on the date that is three (3) days following the Auction.

between the WLB Debtors and their lenders. The Committee's advisors are also investigating the extent to which the WLB Debtors' assets are unencumbered. Although these investigations remain ongoing, the Committee has already identified potential causes of action relating to, among other things, the WLB Debtors' entry into the Bridge Loan Facility in May 2018, and the potential for unencumbered value in the form of tax attributes and interests in certain owned and leased real estate. The Committee expects that its investigations will demonstrate that unsecured creditors, who presently are receiving no recovery under the Plan, are legally entitled to a distribution.<sup>3</sup>

- **The Plan prejudices the outcome of the Committee's investigations that are expected to form the basis for your recovery.** The Bankruptcy Court provided the Committee until January 7, 2019 to complete its investigations.<sup>4</sup> Nevertheless, as noted above, the WLB Debtors have already determined that unsecured creditors are not entitled to any recovery.<sup>5</sup> Moreover, should the Committee's investigations prove otherwise, the WLB Debtors must obtain lender consent in order to modify unsecured creditor distributions.<sup>6</sup> Accordingly, the WLB Debtors have essentially prejudged the outcome of the Committee's investigations by committing themselves to a Plan that provides unsecured creditors with nothing.
- **The Plan improperly seeks to release claims that you may hold against the WLB Debtors' lenders and insiders.** Under applicable Fifth Circuit law, a chapter 11 plan cannot release third party claims unless the third party consents and the release is given in exchange for meaningful consideration. The Plan fails in both respects. *First*, the Plan does not seek actual consent. Instead, the Plan *deems* third parties to have consented to the releases if they vote to accept the Plan, or vote to reject (or abstain from voting on) the Plan but fail to return an "opt out" form. The Committee does not believe that "deemed consent" is sufficient or justified under the circumstances of these chapter 11 cases. *Second*, the Plan does not provide any real

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<sup>3</sup> Relatedly, the Committee believes that the current *de minimis* distribution threshold of \$1,000 is unreasonably high and will have the consequence of depriving a large number of creditors of their Plan distributions. The Committee will seek to have the threshold reduced to a reasonable threshold that will hopefully permit distributions to actually be made to unsecured creditors.

<sup>4</sup> The Committee reserves the right to seek an extension of its investigation period to the extent that the WLB Debtors and their lenders fail to cooperate (including by failing to providing complete and timely responses to the Committee's discovery requests).

<sup>5</sup> The WLB Debtors likewise have stipulated to the validity of the lenders' liens and the amount of the lenders' prepetition claims in connection with entry of the Bankruptcy Court order approving their debtor-in-possession financing. *See* Docket No. 520.

<sup>6</sup> The "General Unsecured Claims Amount" is the term used in the Plan to describe the amount of the distribution made to unsecured creditors under the Plan. In Article VI.B of the Disclosure Statement, the WLB Debtors suggest that they "may amend the Plan" to "increase the General Unsecured Claims Amount" in response to the Committee's investigations. However, Article I.A.81 of the Plan provides that the definition of General Unsecured Claims Amount cannot be modified without the consent of the WLB Debtors' lenders.

consideration in exchange for the releases. In the Disclosure Statement, the WLB Debtors suggest that the “mutual release” offered by lenders and insiders constitutes sufficient consideration. This consideration is illusory. The vast majority of unsecured creditors have no liability whatsoever to any lender or insider of the WLB Debtors and should ascribe no value to the mutual releases.

- **The trustee of the Liquidating Trust will be appointed without any consent from unsecured creditors.** Under the Plan, the trustee of the Liquidating Trust is tasked with, among other things, implementing the Plan, liquidating the WLB Debtors’ remaining assets, negotiating and filing objections to proofs of claim, and making distributions to general unsecured creditors. The Plan currently provides that the trustee of the Liquidating Trust will be selected by WLB Debtors and their lenders. However, if unsecured creditors are entitled to a distribution, the trustee of the Liquidating Trust will be working primarily for their benefit. Accordingly, the Committee believes that it should select the trustee.
- **The Plan contains a host of other problems that may render it unconfirmable.** In addition to the issues identified above, the Committee believes that the Plan contains numerous other flaws that it hopes to address either through negotiation or by filing an objection to confirmation of the Plan.

*For these reasons, among others, the Committee urges Holders of General Unsecured Claims to vote to **REJECT** the Plan and **OPT OUT** of the third-party releases contained therein.*

Notwithstanding the significant problems with the Plan identified in this letter, the Committee will continue to negotiate with the WLB Debtors, their lenders, and other interested parties (including the Pension Benefit Guaranty Corporation, the United Mine Workers of America, and any retiree committee appointed in these chapter 11 cases) to reach a consensual plan that maximizes value and treats all stakeholders fairly. The Committee remains hopeful that these negotiations will obviate the need for wasteful and time-consuming litigation regarding confirmation of the Plan and will benefit all stakeholders by expediting the WLB Debtors’ emergence from chapter 11.

The foregoing description is not intended as a substitute for the Disclosure Statement. Creditors should read the Disclosure Statement and the Plan in their entirety, and then make their own respective independent decision as to whether the Plan is acceptable.

The WLB Debtors have provided you with a Ballot with which to vote to accept or reject the Plan. In order to have your vote counted, you must complete and return the Ballot in accordance with the procedures set forth on the Ballot. **PLEASE READ THE DIRECTIONS ON THE BALLOT CAREFULLY AND COMPLETE YOUR BALLOT IN ITS ENTIRETY BEFORE RETURNING IT TO THE NOTICE & CLAIMS AGENT.**

Should you have any questions about this letter, the Plan, the Disclosure Statement, your Ballot, or the voting procedures, please contact Morrison & Foerster LLP by sending an email to WestmorelandUCC@mofo.com.

Very truly yours,

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF WESTMORELAND COAL COMPANY, *ET AL.*