

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:)	
	)	Chapter 11
)	
WESTMORELAND COAL COMPANY, <i>et al.</i> , ¹	)	Case No. 18-35672 (MI)
)	
Debtors.	)	(Joint Administration Requested)
	)	(Emergency Hearing Requested)

**DEBTORS' EMERGENCY MOTION FOR ENTRY
OF INTERIM AND FINAL ORDERS AUTHORIZING
THE DEBTORS TO ENTER INTO AND PERFORM UNDER
COAL SALE CONTRACTS IN THE ORDINARY COURSE OF BUSINESS**

THIS MOTION SEEKS ENTRY OF AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE. A HEARING WILL BE HELD ON THIS MATTER ON OCTOBER 9, 2018, AT 2:30 P.M. (CT) BEFORE THE HONORABLE DAVID R. JONES, 515 RUSK STREET, COURTROOM 400, HOUSTON, TEXAS 77002.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

¹ Due to the large number of debtors in these chapter 11 cases, for which joint administration has been requested, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the proposed claims and noticing agent in these chapter 11 cases at www.donlinrecano.com/westmoreland. Westmoreland Coal Company's service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)² respectfully state the following in support of this motion (this “Motion”).

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and the “Final Order,” respectively), authorizing the Debtors to enter into and perform under the Coal Sale Contracts (as defined below) in the ordinary course of business on a postpetition basis. In addition, the Debtors request a final hearing within approximately 25 days of the commencement of these chapter 11 cases to consider approval of this Motion on a final basis.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012 (the “Amended Standing Order”). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

² A detailed description of the Debtors’ businesses and the reasons for commencing the chapter 11 cases is set forth in the *Declaration of Jeffrey S. Stein, Chief Restructuring Officer of Westmoreland Coal Company, in Support of Chapter 11 Petitions and First Day Pleadings*, to be filed in connection herewith (the “First Day Declaration”). The terms “WLB Debtors” and “WMLP Debtors” shall have the meanings ascribed to them in the First Day Declaration.

3. The bases for the relief requested herein are sections 105 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rules 6004, and rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

Background

4. Westmoreland Coal Company and its Debtor and non-Debtor affiliates operate the sixth-largest coal-mining enterprise in North America, including 19 coal mines in six states and Canada. The Debtors primarily produce and sell thermal coal to investment grade power plants under long-term, cost-protected contracts, as well as to industrial customers and barbeque charcoal manufacturers. Headquartered in Englewood, Colorado, the Debtors and their non-Debtor subsidiaries employ approximately 2,971 individuals. The Debtors’ revenue for the twelve-month period that ended August 31, 2018, totaled approximately \$850 million. As of the Petition Date, the Debtors’ aggregate prepetition indebtedness totaled approximately \$1.1 billion.

5. On the date hereof (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

The Coal Sale Contracts

6. The Debtors’ businesses rely on the production and sale of thermal coal. Accordingly, the Debtors routinely enter into contracts to sell coal from their mining operations or

coal acquired from other sources to their customers (the “Coal Sale Contracts”).³ The Coal Sale Contracts are long-term agreements (sometimes continuing for several years), often cover very large quantities of coal, and involve millions of dollars in aggregate purchase price. Performance under the Coal Sale Contracts represents a core and critical part of the Debtors’ operations because coal sales generate virtually all of the Debtors’ revenues. The Debtors presently are party to approximately 68 existing Coal Sale Contracts, which generated substantially all of the Debtors’ revenue during the twelve-month period that ended August 31, 2018. Accordingly, it is critical that the Debtors and their counterparties can rely on performance under the existing Coal Sale Contracts during the pendency of these chapter 11 cases.

7. Additionally, the Debtors expect to enter into new Coal Sale Contracts postpetition. Many potential customers may be unwilling to transact with the Debtors without specific authorization from this Court. In the highly competitive coal market, the Debtors must be able to enter into Coal Sale Contracts quickly and efficiently or else they risk losing revenue if certain potential customers are unwilling to accept any perceived risk regarding whether the Coal Sale Contracts are within the ordinary course of the Debtors’ business. Therefore, it is critical that the Debtors are able to reassure their potential customers that entering into new Coal Sale Contracts with the Debtors is permissible under applicable law and authorized by the Court. If the Debtors had to seek Court approval every time they wished to enter into a new Coal Sale Contract, the Debtors believe that they would be at a competitive disadvantage, resulting in a loss of customers and revenues, thus endangering their chances of successfully restructuring.

³ Also, in the ordinary course of business, the Debtors negotiate and enter into amendments to various Coal Sale Contracts. Nothing herein should be construed to limit the Debtors’ ability to amend Coal Sale Contracts in the ordinary course of business.

8. Furthermore, entry into and performance under the Coal Sale Contracts is important, in part because, certain of these contracts include terms providing that the customers will assume all or part of the Debtors' asset retirement obligations relating to the reclamation of their mines. Customers may either pay a sum into a restricted account or pay invoices sent by the Debtors for restoration costs.

9. Accordingly, to prevent any disruption to the Debtors' business operations, the Debtors seek authority to continue performance under the existing Coal Sale Contracts in the ordinary course of business and enter into new Coal Sale Contracts on a postpetition basis.

Basis for Relief Requested

I. The Coal Sale Contracts Are Ordinary Course Transactions.

11. Entry into and performance under the Coal Sale Contracts are ordinary course transactions. Section 363 of the Bankruptcy Code provides, in relevant part, that a debtor in possession "may enter into transactions . . . in the ordinary course of business without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1).

12. The Bankruptcy Code does not define "ordinary course of business," but courts in the Fifth Circuit apply a two-part test to determine whether a transaction is in the ordinary course of a debtor's business. The test analyzes the transaction on both a horizontal and a vertical basis—the horizontal inquiry focusing on whether the transaction is common to a debtor's industry and the vertical inquiry focusing on comparing the proposed transaction to a debtor's prepetition practices. *See, e.g., In re Patriot Place, Ltd.*, 486 B.R. 773, 793 (Bankr. W.D. Tex. 2013) ("[U]nder the vertical test, courts look at whether the transaction subjects a hypothetical creditor to a different economic risk than existed when the creditor originally extended the credit. Under the horizontal test, in general courts look at whether the transaction was of the sort commonly

undertaken by companies in the industry. The primary focus is on the debtor's pre-petition practices and conduct."); *In re Cowin*, No. 13-30984, 2014 WL 1168714, at *41–43 (Bankr. S.D. Tex. Mar. 21, 2014) (applying the “horizontal” and “vertical” prongs of the test).

13. The purpose of section 363(c)(1) of the Bankruptcy Code is to enable a debtor in possession to engage in the ordinary transactions required to operate its business without undue oversight by creditors or the court. *See In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992); *see also Med. Malpractice Ins. Ass'n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997); *Chaney v. Official Comm. of Unsecured Creditors of Crystal Apparel, Inc. (In re Crystal Apparel, Inc.)*, 207 B.R. 406, 409 (S.D.N.Y. 1997). “The ‘ordinary course of business’ standard is intended to allow a debtor the flexibility it needs to run its business and respond quickly to changes in the business climate.” *Habinger, Inc. v. Metro. Cosmetic & Reconstructive Surgical Clinic, P.A.*, 124 B.R. 784, 786 (Bankr. D. Minn. 1990).

14. Here, the Debtors' entry into and performance under the Coal Sale Contracts is an ordinary course transaction based on the Debtors' industry and prepetition practices. Coal Sale Contracts are at the core of the Debtors' business and provide the Debtors with their primary source of revenue. Moreover, because of the capital-intensive nature of coal mining, long-term arrangements like the Coal Sale Contracts are common in the Debtors' industry. As such, entry into and performance under the Coal Sale Contracts are transactions in the ordinary course of the Debtors' business within the meaning explained by courts.

15. The Debtors believe that the Coal Sale Contracts are within the ordinary course of the Debtors' business, and the Bankruptcy Code permits the Debtors to enter into and perform under these contracts without notice and a hearing. Nonetheless, the Debtors believe that certain counterparties may be unwilling to accept any perceived risk regarding the Debtors' authority to

enter into or perform under the Coal Sale Contracts. As a result, the Debtors' existing business could suffer, and the Debtors' competitors may have a material advantage in winning new business all to the detriment of the Debtors' estates. Accordingly, the Debtors request that the Court enter an order providing specific authority for the Debtors, in their sole discretion and without further action by this Court or notice to any party, to enter into and perform under Coal Sale Contracts and take any other actions that the Debtors determine are necessary or appropriate.

II. Authorizing the Debtors to Enter into the Coal Sale Contracts Is in the Best Interests of the Debtors and Their Estates and Creditors.

16. The Debtors submit that the Coal Sale Contracts are within the ordinary course of their business. Nevertheless, even if entering into and performing under the Coal Sale Contracts were outside the ordinary course, the Debtors should be authorized to do so under section 363(b) of the Bankruptcy Code, because it would represent a sound exercise of the Debtors' business judgment.

17. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow the debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." Debtors' decisions to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See, e.g., Inst. Creditors of Cont'l Airlines Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or a debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); *see also In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) ("A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale."); *In re Terrace Gardens Park*

P'ship, 96 B.R. 707, 714 (Bankr. W.D. Tex. 1989). Specifically, once a debtor articulates a valid business justification for a particular form of relief, the court reviews the debtor's request under the business judgment rule. *See Commercial Mortg. and Fin. Co.*, 414 B.R. 389, 394 (Bankr. N.D. Ill. 2009) (noting that debtor in possession "has the discretionary authority to exercise his business judgment in operating the debtor's business similar to the discretionary authority to exercise business judgment given to an officer or director of a corporation").

18. The business judgment rule is a presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company." *ASARCO LLC v. Ams. Mining Corp.*, 396 B.R. 278, 405 (S.D. Tex. 2008) (citations omitted); *In re Filene's Basement, LLC*, No. 11-13511 (KJC), 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) ("If a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate." (citations omitted)). Consequently, a business decision "will be upheld unless it cannot be attributed to any rational purpose." *Freuler v. Parker*, 803 F. Supp. 2d 630, 637 n.6 (S.D. Tex. 2011) (quotations omitted).

19. Moreover, under section 105(a) of the Bankruptcy Code, "the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code." 11 U.S.C. § 105(a); *see also In re CoServ, L.L.C.*, 273 B.R. at 497 (holding that the "Court has inherent authority, through section 105(a) of the Bankruptcy Code to grant this Motion, in the interest of preservation of Debtors' bankruptcy estate."); *In re Mirant Corp.*, 296 B.R. 427, 429 (Bankr. N.D. Tex. 2003) (noting that non-payment of prepetition claims may seriously damage a debtor's business).

20. The Debtors submit that it is appropriate for the Court to authorize the Debtors to enter into new Coal Sale Contracts because such contracts are vital to the Debtors' business operations. This requested relief will eliminate the need to prepare and prosecute motions and obtain express court approval of every new Coal Sale Contract and expedite the flow of cash into the estates. In addition, the requested relief will protect the Debtors against the risk of losing business opportunities or failing to meet existing obligations, maximize the Debtors' active workforce, save the Debtors significant administrative costs, reduce professionals' fees, and enable them to continue their business and generate revenues for the benefit of the Debtors' estates and their creditors.

21. Courts regularly approve similar relief in complex coal cases. *See, e.g., In re Armstrong Energy, Inc.*, No. 17-47541-659 (KSS) (Bankr. E.D. Mo. Dec. 1, 2017); *In re Arch Coal, Inc.*, No. 16-40120-705 (CER) (Bankr. E.D. Mo. Jan. 14, 2016) (authorizing the debtors to enter into and perform under coal sale contracts and coal purchase contracts in the ordinary course of business); *In re Alpha Nat. Res., Inc.*, No. 15-33896 (KRH) (Bankr. E.D. Va. Aug. 5, 2015) (authorizing the debtors to enter into and perform under coal sale contracts in the ordinary course of business); *In re Patriot Coal Corp.*, No. 15-32450 (KLP) (Bankr. E.D. Va. Jun. 4, 2015) (same); *In re James River Coal Co.*, No. 14-31848 (KRH) (Bankr. E.D. Va. Apr. 10, 2014) (same).⁴

Emergency Consideration

22. Pursuant to Bankruptcy Local Rule 9013-1(i), the Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this

⁴ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases could severely disrupt the Debtors' operations at this critical juncture and imperil the Debtors' restructuring. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

23. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, granting the relief requested herein is integral to the Debtors' ability to transition their operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to operate their businesses in the ordinary course and preserve the ongoing value of the Debtors' operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Reservation of Rights

24. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted in the Interim Order and Final Order is intended or should be construed as: (a) an admission as to the validity of any particular claim against a Debtor entity; (b) a waiver of the

Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

25. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

26. The Debtors will provide notice of this Motion to the following parties or their respective counsel (collectively, the "Notice Parties"): (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the indenture trustee under the WLB Debtors' 8.75% senior secured notes due 2022; (d) the ad hoc group of lenders under the WLB Debtors' prepetition term loan facility due 2020 and the WLB Debtors' 8.75% senior secured notes due 2022; (e) the administrative agent under the WLB Debtors' prepetition term loan facility due 2020; (f) the administrative agent under the WLB Debtors' bridge loan facility due 2019; (g) the administrative agent under the WMLP Debtors' term loan facility due 2018; (h) the ad hoc committee of certain lenders under the WMLP Debtors' term loan facility due 2018;

(i) the administrative agent under the WLB Debtors' proposed debtor-in-possession financing facility; (j) the lenders under the WLB Debtors' proposed debtor-in-possession financing facility; (k) any statutory committee appointed in these cases; (l) the United States Attorney's Office for the Southern District of Texas; (m) the Internal Revenue Service; (n) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (o) the offices of the attorneys general for the states in which the Debtors operate; (p) the Securities and Exchange Commission; (q) the Pension Benefit Guaranty Corporation; (r) counterparties to the Debtors' existing Coal Sale Contracts; and (s) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

27. No prior request for the relief sought in this Motion has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and Final Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
October 9, 2018

/s/ Patricia B. Tomasco

Patricia B. Tomasco (Bar No. 01797600)
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*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on October 9, 2018, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Patricia B. Tomasco

Patricia B. Tomasco

Exhibit A

Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
	)	Chapter 11
WESTMORELAND COAL COMPANY, <i>et al.</i> , ¹	)	Case No. 18-35672 (MI)
Debtors.	)	(Joint Administration Requested)
)	
	)	Re: Docket No. __

**INTERIM ORDER AUTHORIZING THE
DEBTORS TO ENTER INTO AND PERFORM UNDER
COAL SALE CONTRACTS IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), authorizing the Debtors to enter into and perform under Coal Sale Contracts in the ordinary course of business, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were

¹ Due to the large number of debtors in these chapter 11 cases, for which joint administration has been requested, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent in these chapter 11 cases at www.donlinrecano.com/westmoreland. Westmoreland Coal Company’s service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion. The terms “WLB Debtors” and “WMLP Debtors” shall have the meanings ascribed to them in the First Day Declaration.

appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2018, at __: __.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Central Time, on _____, 2018, and shall be served on: (a) the Debtors, Westmoreland Coal Company, 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112, Attn.: Jennifer Grafton; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn.: Gregory F. Pesce and Timothy R. Bow; (c) proposed co-counsel for the Debtors, Jackson Walker L.L.P., 1401 McKinney Street, Suite 1900, Houston, Texas 77010, Attn.: Patricia B. Tomasco, Matthew D. Cavanaugh, and Jennifer F. Wertz; (d) counsel to the indenture trustee under the WLB Debtors' 8.75% senior secured notes due 2022; (e) counsel to the ad hoc group of lenders under the WLB Debtors' prepetition term loan due 2020 and the WLB Debtors' 8.75% senior secured notes due 2022, Kramer Levin Naftalis & Frankel, LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn.: Thomas Moers Mayer and Stephen Zide; (f) co-counsel to the ad hoc group of lenders under the WLB Debtors' prepetition term loan due 2020 and the WLB Debtors' 8.75% senior secured notes due 2022, Porter Hedges LLP, 1000 Main Street, Houston, Texas 77002, Attn.: John F. Higgins; (g) counsel to the administrative agent under the WLB Debtors' prepetition

term loan facility due 2020; (h) counsel to the administrative agent under the WLB Debtors' bridge loan facility; (i) counsel to the administrative agent under the WMLP Debtors' term loan facility due 2018; (j) counsel to the ad hoc committee of certain lenders under the WMLP Debtors' term loan facility due 2018, Schulte Roth & Zabel, 919 Third Avenue, New York, NY 10022, Attn.: David M. Hillman and Kristine Manoukian; (k) counsel to the lenders under the WLB Debtors' proposed debtor-in-possession financing, (l) counsel to the administrative agent under the WLB Debtors' proposed debtor-in-possession financing facility, Kramer Levin Naftalis & Frankel, LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn.: Thomas Moers Mayer and Stephen Zide; (m) co-counsel to the administrative agent under the WLB Debtors' proposed debtor-in-possession financing facility, Porter Hedges LLP, 1000 Main Street, Houston, Texas 77002, Attn.: John F. Higgins; (n) counsel to the Conflicts Committee of the Board of Directors for Westmoreland Resource Partners GP, LLC, Jones Day, 77 W. Wacker Dr., Chicago, Illinois 60601, Attn.: Timothy Hoffman, Jones Day, 901 Lakeside Ave E, Cleveland, OH 44114 Attn.: Heather Lennox; (o) counsel to any statutory committee appointed in these cases; and (p) Office of The United States Trustee, 515 Rusk Street Houston, Texas 77002. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. Subject to the DIP Order and the Cash Collateral Order, the Debtors, in their discretion, are authorized to enter into, amend, and fully perform under Coal Sale Contracts in the ordinary course and take any actions and execute any agreements or other documentation that are necessary or desirable to effectuate the transactions contemplated thereunder; *provided* that the Debtors shall disclose, within seven (7) business days after executing any Coal Sale Contract, a confidential summary of material terms of any such Coal Sale Contracts with a term over eighteen

months to the advisors to the Required Consenting Stakeholders (as defined in the Restructuring Support Agreement, attached to the First Day Declaration), the advisors to the DIP Lenders (as defined in the DIP Order), counsel to the DIP Agent (as defined in the DIP Order), and counsel to the MLP Secured Lenders (as defined in the Cash Collateral Order).

4. If any party accepts performance from the Debtors in connection with a Coal Sale Contract under this Interim Order, such party shall be deemed to agree during the pendency of these chapter 11 cases to continue to adhere the terms of such Coal Sale Contract on the normal and customary trade terms, practices, and programs that are at least as favorable to the Debtors as those that were in effect before the Petition Date.

5. Nothing herein shall impair the Debtors' ability to conduct their business in the ordinary course of business without seeking approval of this Court.

6. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights or the rights of any other Person under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Coal Sale Contracts.

9. Solely with respect to the WMLP Debtors, notwithstanding anything to the contrary set forth herein: (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the WMLP Debtors under any orders authorizing the WMLP Debtors' use of cash collateral (in each case, the "Cash Collateral Order"), including any budget in connection therewith (the "WMLP Budget"); and (b) to the extent there is any inconsistency between the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order and the WMLP Budget shall control.

10. Solely with respect to the WLB Debtors, notwithstanding anything to the contrary set forth herein: (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the WLB Debtors under the WLB Debtors' postpetition financing agreement (including with respect to any budgets governing or relating therewith, the "DIP Documents") and any orders (in each case, the "DIP Order") approving the DIP Documents and governing the WLB Debtors' use of cash collateral; and (b) to the extent there is any inconsistency

between the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order and DIP Documents shall control.

11. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

12. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

13. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

14. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

15. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: _____, 2018
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
	)	Chapter 11
WESTMORELAND COAL COMPANY, <i>et al.</i> , ¹	)	Case No. 18-35672 (MI)
Debtors.	)	(Joint Administration Requested)
)	
	)	Re: Docket No. __

**FINAL ORDER AUTHORIZING THE
DEBTORS TO ENTER INTO AND PERFORM UNDER
COAL SALE CONTRACTS IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), authorizing the Debtors to enter into and perform under Coal Sale Contracts in the ordinary course of business, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under

¹ Due to the large number of debtors in these chapter 11 cases, for which joint administration has been requested, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent in these chapter 11 cases at www.donlinrecano.com/westmoreland. Westmoreland Coal Company’s service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion. The terms “WLB Debtors” and “WMLP Debtors” shall have the meanings ascribed to them in the First Day Declaration.

the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on final basis as set forth herein.
2. Subject to the DIP Order and Cash Collateral Order, the Debtors, in their discretion, are authorized to enter into, amend, and fully perform under Coal Sale Contracts in the ordinary course and take any actions and execute any agreements or other documentation that are necessary or desirable to effectuate the transactions contemplated thereunder; *provided* that the Debtors shall disclose, within seven (7) business days after executing any Coal Sale Contract, a confidential summary of material terms of any such Coal Sale Contracts with a term over eighteen months to the advisors to the Required Consenting Stakeholders (as defined in the Restructuring Support Agreement, attached to the First Day Declaration), the advisors to the DIP Lenders (as defined in the DIP Order), counsel to the DIP Agent (as defined in the DIP Order), and counsel to the MLP Secured Lenders (as defined in the Cash Collateral Order).
3. Nothing herein shall impair the Debtors' ability to conduct their business in the ordinary course of business without seeking approval of this Court.
4. Any party that accepts performance from the Debtors on account of a Coal Sale Contract shall be deemed to have agreed to the terms and provisions of this Final Order.
5. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the

validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights or the rights of any other Person under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Coal Sale Contracts.

8. Solely with respect to the WMLP Debtors, notwithstanding anything to the contrary set forth herein: (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the WMLP Debtors under any orders authorizing the WMLP Debtors' use of cash collateral (in each case, the "Cash Collateral Order"), including any budget

in connection therewith (the “WMLP Budget”); and (b) to the extent there is any inconsistency between the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order and the WMLP Budget shall control.

9. Solely with respect to the WLB Debtors, notwithstanding anything to the contrary set forth herein: (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the WLB Debtors under the WLB Debtors’ postpetition financing agreement (including with respect to any budgets governing or relating therewith, the “DIP Documents”) and any orders (in each case, the “DIP Order”) approving the DIP Documents and governing the WLB Debtors’ use of cash collateral; and (b) to the extent there is any inconsistency between the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order and DIP Documents shall control.

10. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

14. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: _____, 2018
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE