

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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

**ORDER ESTABLISHING PROCEDURES FOR INTERIM
COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR PROFESSIONALS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order (this “Order”) authorizing the Debtors to establish procedures for interim compensation and compensation and reimbursement of expenses for Professionals, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Standing Order; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it 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

¹ Due to the large number of debtors in these chapter 11 cases, for which joint administration has been granted, 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’ 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 defined herein shall have the meanings given to them in the Motion.

Motion were 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 as set forth herein.
2. All Professionals in these cases may seek compensation in accordance with the following procedures (collectively, the "Compensation Procedures"):

- a. On or after the 21st day of each month following the month for which compensation is sought, each Professional seeking compensation may file an application (each, a "Monthly Fee Statement") for interim allowance of compensation for services rendered and reimbursement of expenses incurred during the preceding month, and serve such Monthly Fee Statement by email on: (i) the Debtors, Westmoreland Coal Company, 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112, Attn: Jennifer Grafton (jgrafton@westmoreland.com); (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Gregory F. Pesce (gregory.pesce@kirkland.com) and Timothy R. Bow (timothy.bow@kirkland.com); (iii) proposed co-counsel for the Debtors, Jackson Walker LLP, 1401 McKinney Street, Suite 1900, Houston, Texas 77010 Attn: Patricia B. Tomasco (ptomasco@jw.com), Matthew D. Cavanaugh (mcavanaugh@jw.com) and Jennifer F. Wertz (jwertz@jw.com); (iv) counsel to the ad hoc group of secured creditors of Westmoreland Coal Company, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn.: Thomas Moers Mayer (tmayer@kramerlevin.com) and Stephen Zide (szide@kramerlevin.com); (v) counsel to the ad hoc group of secured creditors of Westmoreland Resource Partners, LP, Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022, Attn.: David M. Hillman (david.hillman@srz.com) and Kristine G. Manoukian (kristine.manoukian@srz.com); (vi) proposed counsel to the Conflicts Committee of the Board of Directors for Westmoreland Resource Partners GP, LLC, and conflicts counsel for the WMLP Debtors, Jones Day, 77 W. Wacker Dr., Chicago, Illinois 60601, Attn.: Timothy Hoffmann (thoffmann@jonesday.com), Jones Day, 901 Lakeside Ave, Cleveland, OH 44114 Attn.: Heather Lennox (hlennox@jonesday.com); (vii) counsel to any statutory committee appointed in these cases; and (viii) the Office of the United States Trustee, 515 Rusk Street Houston, Texas 77002 (each an "Application Recipient," and, collectively the "Application Recipients"). Any Professional that fails to file a Monthly Fee Statement for a particular month or months may subsequently

submit a Monthly Fee Statement that includes a request for compensation earned or expenses incurred during the previous months.

- b. Each Application Recipient will have until 4:00 p.m. (Prevailing Central Time) 21 days after service of a Monthly Fee Statement to object to the requested fees and expenses in accordance with paragraph (c) below. Upon the expiration of such 21-day period, the Debtors are authorized and directed to pay the Professional an amount (the “Actual Monthly Payment”) equal to 80% of the fees and 100% of the expenses requested in the applicable Monthly Fee Statement (the “Maximum Monthly Payment”) that are not subject to an objection pursuant to subparagraph (c) below.
- c. If any Application Recipient objects to a Monthly Fee Statement, the objecting party shall, within 21 days of service of the Monthly Fee Statement, serve via email a written notice upon the respective Professional and each of the Application Recipients (the “Notice of Objection to Monthly Fee Statement”) setting forth the precise nature of the objection and the amount at issue. Thereafter, the objecting party and the Professional shall attempt to resolve the objection on a consensual basis. If the parties reach an agreement, the Debtors shall promptly pay 80% of the agreed-upon fees and 100% of the agreed-upon expenses. If, however, the parties are unable to reach a resolution of the objection within 14 days (or such longer period as mutually agreed to by the Professional and the objecting party) after service of the objection, the objecting party shall file its objection (the “Objection”) with the Court within three business days and serve such Objection on the respective Professional and each of the Application Recipients. Thereafter, such Professional may either (i) file with the Court a response to the Objection, together with a request for payment of the difference, if any, between the Maximum Monthly Payment and the Actual Monthly Payment made to the affected Professional (the “Incremental Amount”), or (ii) forego payment of the Incremental Amount until the next hearing on an Interim Fee Application or Final Fee Application (both as defined herein), at which time the parties may request that the Court consider the Objection.
- d. Each Professional may submit its first Monthly Fee Statement no earlier than November 21, 2018. This initial Monthly Fee Statement will cover the period from the Petition Date through October 31, 2018. Thereafter, the Professionals may submit Monthly Fee Statements in the manner described above.
- e. Beginning with the period ending on December 31, 2018, and at three-month intervals thereafter (each, an “Interim Fee Period”), each of the Professionals may file with the Court and serve on the Application Recipients an interim fee application (each an “Interim Fee Application”) for compensation and reimbursement of expenses sought in the Monthly Fee Statements served during such period. Each Interim Fee Application must include (i) a narrative discussion, (ii) a summary of the Monthly Fee Statements that are the subject of such application request, (iii) the amount of fees and expenses paid of date or subject to objection, and (iv) the deadline for parties other than the Application Recipients to file objections. Each Professional shall serve notice of its Interim Fee Application (which identifies the Professional seeking compensation, discloses the period for which the payment of compensation and reimbursement of

expenses is being sought, and describes the amount of compensation and expenses sought) on Application Recipients. Application Recipients and other parties will have 21 days after service of an Interim Fee Application to object thereto. The first Interim Fee Application should cover the Interim Fee Period from the Petition Date through and including December 31, 2018.

- f. The Debtors will request that the Court schedule a hearing on Interim Fee Applications at least once every three months or at such other intervals as the Court deems appropriate. The Court, in its discretion, may approve an uncontested Interim Fee Application without the need for a hearing if no Objections are timely filed thereto. Upon allowance by the Court of a Professional's Interim Fee Application, the Debtors shall be authorized to promptly pay such Professional all requested fees (including the 20% holdback) and expenses not previously paid.
- g. The pendency of an Objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from the future payment of compensation or reimbursement of expenses under the Compensation Procedures.

3. Neither (a) the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses under the Compensation Procedures nor (b) the filing of or failure to file an Objection with the Court will bind any party in interest or the Court with respect to the final allowance of applications for compensation and reimbursement of expenses of Professionals. All fees and expenses paid to Professionals under the Compensation Procedures are subject to challenge and disgorgement until final allowance by the Court.

4. In each Interim Fee Application and Final Fee Application all attorneys who have been or are hereafter retained pursuant to sections 327 or 1103 of the Bankruptcy Code, unless such attorney is retained by the Debtors pursuant to the *Order Authorizing the Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business* (collectively, the "Required Professionals"), (a) shall apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with the Debtors' chapter 11 cases in compliance with sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, Local Bankruptcy Rules, and any other applicable procedures and orders of the Court and (b) intend to make a reasonable effort to comply with the U.S. Trustee's requests for

information and additional disclosures as set forth in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013*, both in connection with any Interim Fee Application and Final Fee Application to be filed by the Required Professionals in these chapter 11 cases.

5. Each member of any official committee formed by the U.S. Trustee is permitted to submit statements of expenses incurred in the performance of the duties of the committee (excluding third-party counsel expenses of individual committee members) and supporting vouchers to the respective committee's counsel, which counsel will collect and file the committee members' requests for reimbursement with this Court in accordance with the Compensation Procedures.

6. The Professionals shall only be required to serve (a) the Monthly Fee Statements, the Interim Fee Applications, and the Final Fee Application on the Application Recipients, and (b) notice of hearings on the Interim Fee Applications and Final Fee Applications on all other parties that have filed a notice of appearance with the clerk of this Court and requested notice of pleadings in these chapter 11 cases.

7. All notices given in accordance with the Compensation Procedures shall be deemed sufficient and adequate notice and in full compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules.

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 under the *Final Order (I) Authorizing the MLP Debtors to Use Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Certain Protections to Prepetition Lenders*

Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 507, (III) Modifying the Automatic Stay, and (IV) Scheduling a Final Hearing (the “Cash Collateral Order”), including the Budget (as defined in the Cash Collateral Order, 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 (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. 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.

11. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

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

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

Dated: _____, 2018
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE