



ENTERED
11/14/2018

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

Westmoreland Coal Company, et al.,¹
Debtors.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

Re: Docket No. 214

**ORDER, PURSUANT TO SECTIONS 327(a) AND
329(a) OF THE BANKRUPTCY CODE, AUTHORIZING
THE RETENTION AND EMPLOYMENT OF JONES DAY
AS COUNSEL FOR THE CONFLICTS COMMITTEE OF THE
BOARD OF DIRECTORS OF WESTMORELAND RESOURCES GP, LLC
AND AS CONFLICTS COUNSEL FOR WESTMORELAND RESOURCE
PARTNERS, LP AND ITS SUBSIDIARIES, EFFECTIVE AS OF THE PETITION DATE**

This matter coming before the Court on the *Application of the WMLP Debtors and the Conflicts Committee of the Westmoreland Resources GP, LLC Board of Directors, Pursuant to Sections 327(a) and 329(a) of the Bankruptcy Code, for an Order Authorizing the Retention and Employment of Jones Day as Counsel for the Conflicts Committee of the Westmoreland Resources GP, LLC Board of Directors and As Conflicts Counsel for Westmoreland Resource Partners, LP and Its Subsidiaries, Effective as of the Petition Date* (Docket No. 214) (the "Application"),² filed by Westmoreland Resource Partners, LP ("WMLP") and WMLP's direct and indirect subsidiaries (collectively with WMLP, the "WMLP Debtors"), as debtors and

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 not otherwise defined herein shall have the meanings given to them in the Application.

debtors in possession in the above-captioned cases, and the Conflicts Committee (the "Conflicts Committee") of the Board of Directors of Debtor Westmoreland Resources GP, LLC ("WMGP"); the Court having reviewed the Application, the Engagement Letters, the Lennox Declaration, the Tywoniuk Declaration and the Disclosure of Compensation and having considered the statements of counsel with respect to the Application at a hearing before the Court (the "Hearing"); the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (d) notice of the Application and the Hearing was sufficient under the circumstances, (e) Jones Day does not hold or represent any interest materially adverse to the WMLP Debtors' estates and is a "disinterested person," as defined in section 101(14) of the Bankruptcy Code and as required by section 327 of the Bankruptcy Code and (f) the Application and all related papers fully comply with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the U.S. Trustee Guidelines; and the Court having determined that the legal and factual bases set forth in the Application, the Lennox Declaration, the Tywoniuk Declaration and the Disclosure of Compensation, and at the Hearing, establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Application is GRANTED as set forth herein.
2. The Conflicts Committee and the WMLP Debtors are authorized to retain and employ Jones Day as counsel to the Conflicts Committee and conflicts counsel to the WMLP Debtors with respect to the Conflicts Committee Matters in these chapter 11 cases, in accordance with sections 327(a) and 329(a) of the Bankruptcy Code, Bankruptcy Rule 2014(a)

and Local Rules 2014-1 and 2016-1, on the terms and conditions set forth in the Application and the Engagement Letters, as modified by this Order, effective as of the Petition Date.

3. Jones Day shall be compensated upon application for its services and reimbursed for any related expenses in accordance with sections 330 and 331 of the Bankruptcy Code, applicable provisions of the Bankruptcy Rules, the Local Rules and any other applicable orders or procedures of this Court. Jones Day shall make reasonable efforts to comply with requests of the United States Trustee for the Southern District of Texas 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*, in connection with any interim fee application or final fee application that Jones Day files in these chapter 11 cases.

4. Notwithstanding anything to the contrary in the Application, the Lennox Declaration, the Tywoniuk Declaration or the Engagement Letters, Jones Day shall not be entitled to reimbursement for any fees or expenses incurred in opposing any objection to Jones Day's fee applications to the extent such fees and expenses are not compensable under Baker Botts L.L.P. v. ASARCO LLC, 135 S. Ct. 2158 (2015).

5. Jones Day shall not charge a markup to the WMLP Debtors with respect to fees billed by contract attorneys who are hired by Jones Day to provide services to the WMLP Debtors and shall ensure that any such contract attorneys are subject to conflict checks and disclosures in accordance with the requirements of the Bankruptcy Code and Bankruptcy Rules.

6. Jones Day shall provide ten-business-days' notice to the WMLP Debtors, the U.S. Trustee, the MLP Ad Hoc Group (as defined in the Cash Collateral Order)³ and any official committee before any increases in the rates set forth in the Application or the Engagement Letter are implemented and shall file such notice with the Court. The U.S. Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in section 330 of the Bankruptcy Code, and the Court retains the right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

7. Jones Day is authorized to: (a) complete its reconciliation of prepetition fees and expenses actually incurred through the Petition Date no later than the date of filing of its first interim fee application; and (b) make a corresponding adjustment to the amount and application of the Retainer, as described in paragraphs 25 and 26 of the Application, on or about that date; and (c) disclose such adjustment in its first interim fee application. Thereafter, Jones Day shall hold the remaining amount of the Retainer as security to satisfy the payment of postpetition fees and expenses. The Retainer shall not be replenished postpetition. Jones Day shall not apply any portion of the Retainer to fees and expenses incurred from and after the Petition Date unless and until authorized to do so by a further order of this Court. Upon the conclusion of Jones Day's representation of the Conflicts Committee and the WMLP Debtors (or as otherwise directed by the Court), Jones Day shall apply the remaining portion of the Retainer, if any, against any unpaid fees or unreimbursed disbursements, with any unapplied portion of the Retainer to be promptly returned to the WMLP Debtors.

³ "Cash Collateral Order" means the *Interim 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* (Docket No. 95) and any related final order (as each may be amended, modified or supplemented in accordance with the terms thereof).

8. Jones Day shall use its reasonable efforts and coordinate with the Debtors (as such term is defined in the First Day Declaration) and their other retained professionals to avoid the duplication of services provided by other professionals retained by the Debtors (as such term is defined in the First Day Declaration) in these chapter 11 cases.

9. During the pendency of these chapter 11 cases, Jones Day will (a) review its files periodically to ensure that no disqualifying professional conflicts exist or arise and (b) supplement the Lennox Declaration as necessary, consistent with the disclosure requirements of section 327(a) of the Bankruptcy Code and Bankruptcy Rule 2014.

10. This Order shall be immediately effective and enforceable upon its entry.

11. To the extent that this Order is inconsistent with the Application, the Lennox Declaration, the Tywoniuk Declaration or the Engagement Letters, the terms of this Order shall govern.

12. The Conflicts Committee, the WMLP Debtors and Jones Day are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

13. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Signed: November 14, 2018.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE