

reimbursement, and related provisions (the “Indemnification Provisions”), which Indemnification Provisions are set forth in Annex A to the Engagement Letter; (c) modifying certain time-keeping requirements as set forth below; and (d) granting related relief, all as more fully set forth in the Application; and upon the Puntus Declaration; and this Court having reviewed the Application 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 Application 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 Application is granted as set forth herein.
2. The retention and employment of Centerview as financial advisor and investment banker to the Debtors pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Bankruptcy Local Rule 2014-1, on the terms and conditions set forth in the Engagement Letter, the Application, and the Puntus Declaration, is approved, *nunc pro tunc* to the Petition Date, subject to the terms of this Order and the following modifications as set forth herein.
3. The terms of the Engagement Letter, including without limitation, the Fee and Expense Structure and the Indemnification Provisions, are reasonable terms and conditions of employment and are approved as modified herein. Subject to Paragraph 8 of this Order, all compensation and reimbursement of expenses payable under the Engagement Letter shall be subject to review only pursuant to the standards set forth in Bankruptcy Code section 328(a) and shall not be subject to any other standard of review including, but not limited to, that set forth in Bankruptcy Code section 330.

4. None of the fees payable to Centerview under the Engagement Letter shall constitute a “bonus” or fee enhancement under applicable law.

5. Such other services as may be requested by the Debtors and agreed to by Centerview shall be subject to separate application and approval by Court order.

6. Centerview shall be compensated for fees and reimbursed for out-of-pocket expenses in accordance with the terms of the Engagement Letter, as modified herein, and all fees and out-of-pocket expense reimbursements to be paid to Centerview, including without limitation the Monthly Advisory Fee, Transaction Fee, the Minority Sale Transaction Fee, and Financing Advisory Fee shall be subject to Section 328(a) of the Bankruptcy Code, except as set forth herein. For the avoidance of doubt, these fees shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code except as set forth in Paragraph 8 of this Order.

7. Centerview shall file monthly statements and interim and final fee applications for the allowance of compensation for services rendered and reimbursement of out-of-pocket expenses incurred in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any applicable orders of this Court, including any order entered by this Court establishing procedures for interim compensation and reimbursement of expenses for professionals; *provided* that the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Bankruptcy Local Rules are hereby modified such that Centerview’s restructuring professionals shall only be required to maintain reasonably detailed time records in one-half hour increments and will submit, with any interim or final fee application, together with the time records, a narrative summary, by project category, of services rendered and will identify each professional rendering the services, the category of services rendered, and the total amount of compensation sought by Centerview.

8. Notwithstanding anything to the contrary contained herein, and any provision in the Application, the Engagement Letter, or the Indemnification Agreement, the U.S. Trustee retains all rights to respond or object to the reasonableness of Centerview's monthly, interim and final applications for compensation (including without limitation the Monthly Advisory Fee, Transaction Fee, the Minority Sale Transaction Fee, and Financing Advisory Fee) and reimbursement of out-of-pocket expenses pursuant to Section 330 of the Bankruptcy Code, and the Court retains jurisdiction to consider the U.S. Trustee's response or objection to Centerview's monthly, interim and final fee applications pursuant to Section 330 of the Bankruptcy Code, *provided* that reasonableness for this purpose shall include, among other things, an evaluation by comparing the fees payable in this case to the fees paid to other investment banking firms for comparable services in other chapter 11 cases and outside of chapter 11 cases, and shall not be evaluated primarily on the basis of time committed or the length of these cases.

9. Notwithstanding anything in Application or the Engagement Letter to the contrary, to the extent that Centerview uses the services of independent or third-party contractors or subcontractors (the "Contractors") in these cases and Centerview seeks to pass through the fees and/or costs of the Contractors to the Debtors, Centerview shall (i) pass through the fees of such Contractors to the Debtors at the same rate that Centerview pays the Contractors; and (ii) seek reimbursement for actual costs of the Contractors only. In addition, the Debtors shall ensure that the Contractors perform the conflicts checks and file such disclosures as required by Bankruptcy Code and Rules.

10. The indemnification, contribution, and reimbursement provisions included in Annex A to the Engagement Letter are approved, during the pendency of the chapter 11 cases, subject to the following modifications:

- Centerview shall not be entitled to indemnification, contribution, or reimbursement set forth in the Engagement Letter, unless such indemnification, contribution, or reimbursement is approved by the Court.
- Notwithstanding any provision of the Engagement Letter to the contrary, the Debtors shall have no obligation to indemnify any Indemnified Person (as defined by the Engagement Letter) for any claim or expense that is either: (a) judicially determined (the determination having become final) to have arisen from that Indemnified Person's self-dealing, breach of fiduciary duty (if any), gross negligence, willful misconduct or bad faith; or (b) settled without the Debtors' consent prior to a judicial determination as to the Indemnified Person's self-dealing, breach of fiduciary duty (if any), gross negligence, willful misconduct or bad faith but determined by the Court, after notice and a hearing, to be a claim or expense for which such Indemnified Person should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Letter, as modified by the Order.
- If, before the earlier of: (a) the entry of an order confirming a chapter 11 plan in the chapter 11 cases (that order having become a final order no longer subject to appeal); and (b) the entry of an order closing the chapter 11 cases, Centerview believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Engagement Letter (as modified by the Order), including without limitation, the advancement of defense costs, Centerview must file an application therefor in this Court, and the Debtors may not pay any such amounts to Centerview before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses for indemnification, contribution, and/or reimbursement by Centerview, and is not a provision limiting the duration of the Debtors' obligation to indemnify, or make contributions or reimbursements to Centerview.

11. In addition, if indemnification or reimbursement obligations are held to be unavailable by any court by reason of a final judicial determination of self-dealing, breach of fiduciary duty (if any), gross negligence, willful misconduct or bad faith, and Centerview makes a claim for the payment of any amounts by the Debtors on account of the Debtors' contribution obligations, then the proviso set forth in the first sentence of the contribution provisions set forth in Paragraph 5 of the Indemnification Provisions (that are attached to the Engagement Letter as Annex A) shall not apply.

12. In the event that during the pendency of these chapter 11 cases, Centerview seeks reimbursement for any attorneys' fees and/or expenses pursuant to the Engagement Letter, the invoices and supporting time records from such attorneys shall be included in Centerview's fee applications and such invoices and time records shall be in compliance with the Bankruptcy Local Rules, and shall be subject to the U.S. Trustee Guidelines and approval of the Court under the standards of Bankruptcy Code sections 330 and 331, without regard to whether such attorney has been retained pursuant to Bankruptcy Code section 327 and without regard to whether such attorney's services satisfy section 330(a)(3)(C) of the Bankruptcy Code; *provided, however*, that such attorneys' fees shall not include fees related to negotiating the Engagement Agreement; *provided further, however*, that Centerview shall not seek reimbursement from the Debtors' estates for any fees incurred in defending any of Centerview's fee applications in these bankruptcy cases.

13. Notwithstanding anything to the contrary in the Engagement Letter or herein: (a) it is understood that in October 2018, the Debtors paid Centerview \$3,750,000 of the Transaction Fee payable to Centerview pursuant to and in accordance with Paragraph 2(b) of the Engagement Letter and therefore only \$3,750,000 of the Transaction Fee remains unpaid; (b) Centerview shall not seek or otherwise be entitled to payment of a Financing Advisory Fee upon entry of interim or final orders granting the Emergency Motion of Westmoreland Coal Company and Certain Debtor Affiliates For Entry of Interim and Final Orders (I) Authorizing Westmoreland Coal Company and Certain of Its Affiliates to Obtain Postpetition Secured Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief [Docket No. 17]; (c) the third sentence of the definition of "Aggregate Consideration" in the Engagement Letter shall be

amended and restated as follows: Aggregate Consideration shall also include the net realizable value (on the closing date of the Minority Sale and as determined by Centerview in good faith), if positive, of any current assets not sold to the Acquiror; and (d) for the avoidance of doubt, the foregoing shall not affect the crediting of any Monthly Fees or Financing Advisory Fees against other fees payable to Centerview as provided in the Engagement Letter.

14. Lazard Freres & Co. LLC is acting as investment banker for the Conflicts Committee of the board of directors of Westmoreland Resource Partners, GP, general partner of Westmoreland Resource Partners, LP. Centerview will work closely with Lazard, the Debtors, and the other retained professionals to clearly delineate the respective scope of work and use its reasonable efforts to prevent unnecessary duplication of services whenever reasonably possible.

15. Notwithstanding anything contained in this Order, the Application or the Engagement Letter, none of the MLP Debtors shall be responsible for or pay for (and no portion of the Prepetition Collateral, Cash Collateral or Adequate Protection Collateral (as such terms are defined in the Cash Collateral Order⁴) shall be used to pay for) any work performed by or any fees, expenses and/or other compensation of Centerview, which, for the avoidance of doubt, is being retained solely by and for the benefit of the Debtors (and not by any of the MLP Debtors).

16. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

⁴ Cash Collateral Order” shall mean 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 (each as amended, modified or supplemented in accordance with the terms thereof).

17. Centerview shall use reasonable efforts to avoid any duplication of services provided by any of the Debtors' other retained professionals in these chapter 11 cases.

18. To the extent that there may be any inconsistency between the terms of the Application, the Engagement Letter, and this Order, the terms of this Order shall govern.

19. Notice of the Application satisfies the requirements of Bankruptcy Rule 6004(a).

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Application.

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

Signed: November 14, 2018.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE