UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
WESTMORELAND COAL COMPANY, *et al.*,[1]	)	Case No. 18-35672 (DRJ)
Debtors.	)	(Jointly Administered)

DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105, 1113 AND 1114 FOR AN ORDER AUTHORIZING (BUT NOT DIRECTING) THE DEBTORS TO (A) REJECT CERTAIN COLLECTIVE BARGAINING AGREEMENTS, (B) IMPLEMENT THE DEBTORS' PROPOSAL, AND (C) MODIFY CERTAIN RETIREE BENEFITS

THIS MOTION SEEKS 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. YOU MUST FILE AND SERVE YOUR RESPONSE BY THE DEADLINE SET BY THE COURT. 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.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

A HEARING WILL BE HELD ON THIS MATTER ON FEBRUARY 4, 2019, AT 9:00 AM (CT) BEFORE THE HONORABLE DAVID R. JONES, 515 RUSK STREET, COURTROOM 400, HOUSTON, TEXAS 77002.

[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.

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I. INTRODUCTION

Westmoreland Coal Company ("WLB") and its affiliates, as debtors and debtors in possession (the "Debtors"),[1] file this motion (this "Motion") seeking entry of an order, in the form attached as **Exhibit 1,** authorizing, but not directing, the Debtors to (a) reject the Western Coal Wage Agreement of 2012 between WLB and the International Union, United Mine Workers of America (the "UMWA") (including all amendments, predecessor and successor agreements, side letters and memoranda of understanding, the "Kemmerer CBA") and the Labor Agreement between Dakota Westmoreland Corporation and the UMWA, dated December 15, 2014 (including all amendments, predecessor and successor agreements, side letters and memoranda of understanding, the "Beulah CBA" and, together with the Kemmerer CBA, the "UMWA CBAs"); (b) modify the Debtors' obligations to make payments on account of all retiree benefits (as such term is defined in 11 U.S.C. § 1114), including Coal Act benefits, related to any retired employees (and their spouses and dependents) affiliated with or represented by the UMWA (collectively, the "Retiree Benefits"); and (c) implement the terms of their section 1113 and section 1114 proposal attached hereto as **Exhibit 2** (the "Proposal").

In support of this Motion, the Debtors submit the declaration of Marc Puntus, attached as **Exhibit 3** ("Puntus Decl."), the declaration of Jeffrey Stein, attached as **Exhibit 4** ("Stein Decl."), the declaration of Doug Goodheart, attached as **Exhibit 5** ("Goodheart Decl."), the declaration of Elizabeth Martinez, attached as **Exhibit 6** ("Martinez Decl."), the declaration of Tyler Cowan, attached as **Exhibit 7** ("Cowan Decl."), and the declaration of Greg Ossi, attached as **Exhibit 8** ("Ossi Decl."). The Debtors will present additional evidence at the hearing on the Motion, unless these matters can be resolved by agreement.

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[1] The term "WLB Debtors" means all Debtors except for Westmoreland Resource Partners, LP ("WMLP") and WMLP's subsidiaries (collectively with WMLP, the "WMLP Debtors").

In further support of this Motion, the Debtors respectfully state as follows:

1. The coal industry is troubled, and many coal-focused businesses have been forced to seek chapter 11 protection.[2] The Debtors were able to hold out longer than most of their competitors, but ultimately were unable to avoid the same fate.

2. Many factors underlie the plight of the coal business, most of them macroeconomic. Technology rendered other energy sources cheaper than coal for many uses, decreasing demand.[3] And while technology reduced the demand for coal, the regulatory landscape simultaneously made it more and more costly to mine and use coal.[4] As a result, world coal production has plummeted; 2016 witnessed the largest decline since recordkeeping began,[5] and the decline continues.[6]

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2 *See, e.g.*, *In re Alpha Natural Resources, Inc., et al.*, No. 15-33896-KRH (Bankr. E.D. Va.); *In re Walter Energy, Inc. et al.*, No. 15-02741-TOM (Bankr. N.D. Ala.); *In re Patriot Coal Corp., et al.*, No. 15-32450 (Bankr. E.D. Va.); *In re Mission Coal Company, LLC, et al.*, No. 18-04177 (Bankr. N.D. Ala.). *See generally* https://www.cbsnews.com/news/mission-coal-bankruptcy-marks-5th-coal-company-in-3-years/ (Mission Coal "joins Colorado-based Westmoreland Coal, one of the country's oldest coal companies, which filed for bankruptcy earlier this month, and Peabody Energy, Arch Coal and Alpha Natural Resources, which all have ended up in bankruptcy courts since 2015"); Taylor Kuykendell, "Roster of US Coal Companies Turning to Bankruptcy Continues to Swell," 6/4/2015, *available at* https://www.snl.com/interactiveX/Article.aspx?cdid=A-32872208-12845&FreeAccess=1 (listing 40 additional coal companies that filed for bankruptcy from 2012-2015).

3 *See In re Patriot Coal Corp.*, 493 B.R. 65, 92 (Bankr. E.D. Mo. 2013) ("Nobody disputes that in recent years, the demand and price of coal have drastically declined. This is believed to be caused in part because of technological advances in hydraulic fracking, which is generally a more efficient means of extracting shale gas (natural gas) from the earth."); *see* James Taylor, *Closing Coal Power Plants, Replacing With Natural Gas, Makes Economic Sense*, Forbes (Feb. 26, 2018), https://www.forbes.com/sites/jamestaylor/2018/02/26/closing-coal-power-plants-replacing-with-natural-gas-makes-economic-sense/#76b65d232389 ("[R]ecent technological advances have made the recovery of America's huge natural gas reserves efficient and inexpensive," thus it now "makes economic sense to replace many of America's existing coal power plants with new natural gas plants that can produce electricity at lower cost."); Larry Light, *Why natural gas is the future -- not coal*, CBSNews (March 16, 2017), https://www.cbsnews.com/news/natural-gas-coal-future/ ("New capabilities are emerging all the time for gas" but "[c]oal mining, on the other hand, has not come up with any radically new approaches for decades").

4 *See* ECF No. 54, Declaration of Jeffrey S. Stein, Chief Restructuring Officer of Westmoreland Coal Company, In Support of Chapter 11 Petitions and First Day Pleadings (the "FDD"), ¶ 13; *see also Patriot Coal*, 493 B.R. at 92 (decline for coal attributed to the fact that "[n]atural gas can be used as an energy source to produce electricity in lieu of coal," and "[o]ther electricity generators have relied on renewable sources of energy such as wind").

5 *See* FDD, ¶ 54; Rakteem Katakey, *World Coal Production Just Had Its Biggest Drop on Record*, BLOOMBERG (June 13, 2017), https://www.bloomberg.com/news/articles/2017-06-13/coal-s-era-starts-to-wane-as-world-shifts-to-cleaner-energy (last accessed Dec. 20, 2018) ("Production of [coal] dropped by a record amount in 2016," with global consumption dropping 1.7 percent "compared with an average 1.9 yearly increase").

6 FDD, ¶ 55; Brad Plumer, *Trump's New Pollution Rules Still Won't Save the Coal Industry*, New York Times (Aug. 22, 2018), https://www.nytimes.com/2018/08/22/climate/trump-coal-industry.html (last accessed Dec. 20,

3. Bankruptcy courts confronting this business reality have uniformly concluded that the coal business has fundamentally and permanently changed for the worse, forcing coal companies to modify their cost structure in order to survive.[7]

4. Reforming labor agreements and shedding burdensome legacy liabilities has been critical to coal companies' efforts to restructure their obligations and keep their businesses alive. Thus, this Motion follows a string of similar efforts in other coal-related chapter 11 cases, and the Debtors seek relief similar to relief obtained by the Debtors' peers, including in:

- *In re Alpha Natural Resources*. The *Alpha* debtors employed 610 UMWA-represented employees and provided benefits to 2,600 UMWA-represented retirees. They were also required to contribute to both Coal Act Funds and maintain an Individual Employer Plan ("IEP") for Coal Act retirees.[8] Alpha initially sought to reorganize, but later switched to a going-concern sale under a chapter 11 plan, and sought section 1113 and 1114 relief.[9] The UMWA, UMWA pension and health care funds, and the Coal Act Funds objected, claiming that: (1) §§ 1113 and 1114 do not apply to debtors who are selling assets; (2) Coal Act obligations are not modifiable; (3) the debtors failed to negotiate as required for § 1114 relief; and (4) relief was not necessary for a reorganization.[10] The bankruptcy court disagreed, finding that the debtors' proposal to reject their collective bargaining agreements ("CBAs") and terminate retiree liabilities was essential to their going-concern sale, as no viable bidder was willing to buy the assets subject to the CBAs. The court held that, as here, "[w]here a proposal is necessary for the debtor's viability and the other [statutory] requirements are met, no good causes [] exist[] to reject the proposal, even if the proposal requires sacrifices by the union or retirees."[11]

2018) (even with less-stringent regulation, "[c]oal-fired electricity will still decline by roughly 20 percent by 2030," and "[t]he total amount of coal mined for electricity would drop by one-third, compared with levels that are already the lowest in decades"); James Paton, *Goldman Sees Indian Coal Worsening Glut in World Awash in Fuel*, Bloomberg (Feb. 15, 2016), https://www.bloomberg.com/news/articles/2016-02-16/goldman-sees-indian-coal-worsening-glut-in-world-awash-in-fuel (last accessed Dec. 20, 2018) (quoting analysis from Goldman Sachs Group Inc.) ("investment in new coal-fired generation is becoming less common and the implied decline in long-term demand appears to be irreversible," coal hit a high point in 2013 and will likely only decline in the future).

7 *See, e.g.*, *In re Alpha Nat. Res., Inc.*, 552 B.R. 314, 332 (Bankr. E.D. Va. 2016) ("The coal industry is not merely in the trough of a business cycle . . . ."); *Patriot Coal*, 493 B.R. at 139 ("[T]he world of [the coal industry] pre-October 31, 2007 is gone with the wind…").

8 *Alpha Nat. Res.*, 552 B.R. at 320.

9 *Id.* at 321-23.

10 *Id.*

11 *Id.* at 333, 336.

- *In re Walter Energy*. The *Walter* debtors employed 700 UMWA-represented employees and owed benefits to 3,100 UMWA or United Steelworkers-represented retirees as well as 100 non-union retirees represented by a committee.[12] Like the Debtors here, the *Walter* debtors pursued a going-concern sale to an entity owned by their first lien creditors.[13] In furtherance of that sale, the debtors filed a section 1113/1114 motion seeking to reject their CBAs and terminate retiree benefits.[14] In circumstances akin to those present here, the court held that "[i]n the context of a liquidation or sale of substantially all of a debtor's assets, the phrase 'necessary to an effective reorganization' means ... necessary to the Debtor's liquidation."[15] As here, the *Walter* debtors' coal operations could not be sold to any potential buyer subject to the CBAs and retiree benefits; no buyer was willing to assume such obligations. Thus, the court granted the debtors' motion, allowing them to terminate their UMWA CBAs and to modify their retiree benefit obligations (including Coal Act obligations).[16] There, as here, "maintaining the coal operations as a going concern, keeping the mines open, offering future job opportunities and continuing to be a productive member of the business community all require this Court to overrule the UMWA and the UMWA Funds' objections."[17]

- *In re Patriot Coal*. Patriot Coal has gone through two recent bankruptcies. The debtors in *Patriot I* had 1650 UMWA-represented employees,[18] covered 8,100 retirees' health care through IEPs, and financed Coal Act benefits for another 2,300.[19] The *Patriot I* court granted the debtors' section 1113/1114 motion, authorizing them to reject their CBAs, impose substantial reductions in wages and work rules, terminate certain retiree benefits, and transition retiree health care to a Voluntary Employee Beneficiary Association ("VEBA").[20] Two years later, Patriot filed for bankruptcy again. In *Patriot II*, there was only one buyer for the debtors' operating assets, and the buyer refused to accept existing CBAs or pay retiree benefits. The Court authorized the debtors to reject their CBA,[21] and the UMWA agreed to a new CBA with the buyer containing none of these benefits.

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12 *In re Walter Energy, Inc.*, 542 B.R. 859, 866-67 (Bankr. N.D. Ala. 2015), *aff'd*, 579 B.R. 603 (N.D. Ala. 2016), *aff'd* — F.3d —, 2018 WL 6803736 (11th Cir. Dec. 27, 2018).

13 *Id.* at 866.

14 *Id.* at 874.

15 *Id.* at 888.

16 *Id.* at 876-91.

17 *Id.* at 899.

18 *Patriot Coal*, 493 B.R. at 80-81.

19 *Id.* at 91.

20 *Id.* at 106.

21 Case No. 15-32450, United States Bankruptcy Court for the Eastern District of Virginia, ECF No. 1321.

5. Like their peers, the Debtors face immense pressure that threatens their existence. In fact, in May 2018, the WLB Debtors faced the possibility of a free-fall bankruptcy filing that could have forced the WLB Debtors to cease operations and liquidate. However, after extensive good-faith financing and restructuring discussions, the WLB Debtors obtained access to bridge financing from the WLB Debtors' first-lien lenders that allowed the WLB Debtors to avoid a free-fall filing and provided runway to negotiate a consensual restructuring transaction with the WLB Debtors' secured creditors. Similarly, the WMLP Debtors negotiated with their secured lenders regarding the consensual use of the lenders' cash collateral, which provided the WMLP Debtors the liquidity to continue operations and preserve their mines until a sale process could conclude.

6. In October 2018, following months of negotiations, the Debtors commenced these chapter 11 cases to effectuate a restructuring of the WLB Debtors backstopped by an *ad hoc* group of approximately 87% of their first lien lenders (the "Ad Hoc Group") on the terms set forth in a restructuring support agreement (the "RSA")[22] and the restructuring of the WMLP Debtors through a value maximizing sale with the support of their prepetition lenders.

7. Under the RSA, a new entity, funded by the Ad Hoc Group (the "Stalking Horse"), would be the stalking horse bidder for substantially all of the WLB Debtors' assets, subject to higher and better bids following the market-testing of the Stalking Horse's bid through the WLB Debtors' auction process. Similarly, the Cash Collateral Order contemplates the sale of all or substantially all of the WMLP Debtors' assets pursuant to a sale protocol.[23] The transactions contemplated by the RSA and Cash Collateral Order would allow the Debtors' assets to continue operating as going concerns, preserving the operations and over a thousand jobs.

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22 *See* Ex. 9, RSA.

23 *See* ECF No. 521 (as amended, modified or supplemented from time to time, the "Cash Collateral Order").

8. The Debtors determined that the best way to maximize the value of their assets for all stakeholders was to market-test the Stalking Horse Bid through an auction process and to expeditiously sell the assets to the highest or otherwise best bidder. And, on November 15, 2018, the Court authorized the WLB Debtors' auction process pursuant to an order approving bidding procedures.[24] Bids for the WLB Debtors' Core Assets (as defined in the Bidding Procedures Order) were due on January 15, 2019. The WMLP Debtors have been separately marketing their assets on a parallel track pursuant to the Cash Collateral Order.[25]

9. The Stalking Horse's bid covers all of the WLB Debtors' Core Assets, and the Stalking Horse has agreed to take all of the WLB Debtors' Non-Core Assets (as defined in the Bidding Procedures Order) to the extent the Non-Core Assets are not sold to a third party. However, the Stalking Horse will not acquire ***any*** of the WLB Debtors' assets if they are burdened by the UMWA CBAs or the Retiree Benefits. And all of the other bids or indications of interest received by the WLB Debtors are contingent on modifications to (or rejection of) the UMWA CBAs and termination of the Retiree Benefits. Similarly, all bids that the WMLP Debtors received for their assets are conditioned on the WMLP Debtors selling their assets free and clear of, among other things, the Kemmerer CBA and any Retiree Benefits (including Coal Act liabilities, if any).

10. Thus, the Debtors had no choice but to initiate the section 1113/1114 process, and the Debtors made a formal proposal to modify the UMWA CBAs and the Retiree Benefits. The Debtors then fulfilled the UMWA's information requests, had 6 in-person or telephonic bargaining sessions with the UMWA (so far), and diligently sought to reach agreement. The Debtors will continue doing so between the filing of this Motion and the hearing.

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24 *See* ECF No. 519 (the "Bidding Procedures Order").

25 *See* ECF No. 1042.

11. The UMWA rejected the Debtors' Proposal without cause, and in fact made ***zero*** formal counterproposals during the entire process. Absent the requested relief, all stakeholders face a piecemeal liquidation where value is destroyed, the UMWA CBAs are rejected, and the Retiree Benefits (other than those backstopped by the Coal Act)[26] are not paid.

12. Accordingly, the Debtors respectfully request that the Court enter the proposed Order attached as Exhibit 1, authorizing (but not directing) the Debtors to reject their UMWA CBAs and modify the Retiree Benefits. The Debtors will continue (even after filing the Motion) to negotiate in an effort to avert rejection of the UMWA CBAs and termination of the Retiree Benefits, because the Debtors far prefer an agreement.[27] But, if no agreement can be reached, the Debtors will have no choice other than to reject the UMWA CBAs and terminate their Retiree Benefit obligations.

II. JURISDICTION AND VENUE

13. This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012.

14. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure, to the entry of a final order by the Court in connection with this Motion.

15. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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[26] The Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. § 9701 *et seq*. (the "Coal Act") backstops retiree benefits of certain people who retired before 1994, and their eligible dependents (the "Coal Act Retirees"). If, as part of the relief requested in this Motion, the WLB Debtors seek authority to terminate their obligations to make payments on account of retiree benefits backstopped by the Coal Act, but even if the Motion is granted, ***those benefits will still be paid to Coal Act Retirees*** by the UMWA 1992 Benefit Plan (the "1992 Benefit Plan") and the UMWA Combined Benefit Fund (the "Combined Benefit Fund") (together, the "Coal Act Funds").

[27] The Debtors are hopeful that the UMWA will come back to the table after the filing of this Motion in an effort to reach agreement prior to the hearing on this Motion.

16. The bases for the relief requested herein are sections 105, 1113, and 1114 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 6004 of the Federal Rules of Bankruptcy Procedures (the "Federal Rules"), and the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules").

III. RELIEF REQUESTED

17. By this Motion, the Debtors seek entry of an order, attached hereto as **Exhibit 1** authorizing, but not directing, the Debtors to (a) reject the UMWA CBAs, (b) terminate the Retiree Benefits, and (c) implement the terms of the Proposal.

IV. BACKGROUND

A. The Debtors' Assets, Liabilities, and Collective Bargaining Agreements

18. The Debtors are the sixth largest North American coal producer, maintaining U.S. operations in Montana, Wyoming, North Dakota, Texas, New Mexico, and Ohio, and Canadian operations in Alberta and Saskatchewan. A map of the Debtors' operations is provided below:

19. The Debtors' assets are currently encumbered by secured debt exceeding $1 billion. The Debtors' current secured debt obligations (as borrower or guarantor) are summarized below:

Debt Instrument	Maturity Date	Outstanding Principal Amount
WMLP Term Loan Facility	December 31, 2018	$326.8 million
	WMLP Total	***$326.8 million***
WLB DIP Loan Facility	May 21, 2019	$110 million
WLB Term Loan Facility	December 16, 2020	$320 million
WLB Senior Secured Notes	January 1, 2022	$350 million
	WLB Total	***$780 million***
	Total Secured Debt Obligations	***$1.106.8 billion***

20. The WLB Debtors are parties to seven CBAs governing their U.S. employees, listed below (the two UMWA CBAs at issue in this Motion are bolded):

Debtor Entity	Union	Current Term
San Juan (Underground)	IUOE	5/01/2011 – 10/31/2019
San Juan (Surface)	IUOE	2/01/2013 – 7/31/2019
WLB (Kemmerer mine)	**UMWA**	**5/01/2012 – 7/31/2019**
Western Energy Co. ("WECO")	IUOE	1/01/2013 – 2/28/2019
Dakota Westmoreland ("Beulah")	**UMWA**	**1/02/2015 – 1/01/2021**
Westmoreland Savage ("Savage")	IUOE	4/01/2016 – 3/31/2021
Westmoreland Resources ("WRI")	IUOE	04/17/2015 – 05/31/2021

21. The WLB Debtors' CBAs with the International Union of Operating Engineers ("IUOE"), referenced above, are more affordable and market-based than the UMWA CBAs.[28] Certain of those CBAs also relate to assets (the San Juan and WECO mines) that are "Core Assets" under the RSA and an important part of the WLB Debtors' future plans. In addition, the WLB Debtors recently reached agreement with the IUOE-San Juan underground miners on appropriate CBA modifications, and the WLB Debtors continue discussions with the IUOE-San Juan surface miners. The Debtors do not currently intend to address the other IUOE CBAs (at WECO, Savage, and WRI), as they are acceptable to the WLB Debtors and the Stalking Horse.[29] Thus, this Motion currently addresses only the WLB Debtors' two UMWA CBAs, listed in bold above.

B. Obligations That The Debtors Seek Authority To Reject or Modify

22. This Motion addresses the two UMWA CBAs identified above and the Retiree Benefits. However, one of the mines at which relevant employees work, Kemmerer, is actually owned by Westmoreland Kemmerer, LLC ("Kemmerer"), a subsidiary of Debtor WMLP. WMLP is a different, publicly-traded entity, and a conflicts committee (the "Conflicts Committee") oversees potential conflicts between the WMLP Debtors and the WLB Debtors, including the sale process for the WMLP Debtors' assets.[30]

23. As described below, these facts are very relevant to the Motion, as the Debtor entity that is actually party to the Kemmerer CBA (Westmoreland Coal Company) will (after the sale)

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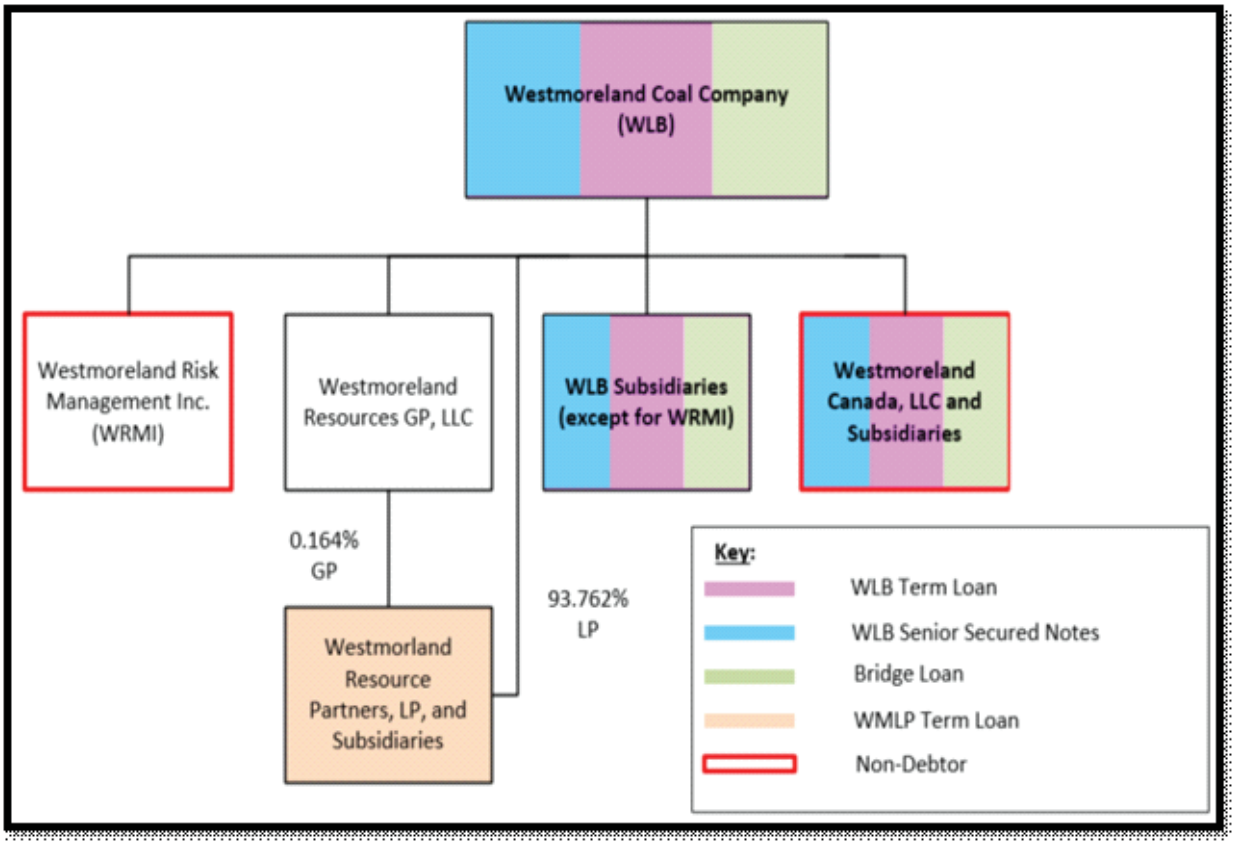
28 *See* Ex. 6, Martinez Decl., ¶¶ 21-22.

29 Critically, WLB's agreements with IUOE at WECO, Savage, and WRI do not provide retiree medical benefits and do not require the Debtors to maintain a single employer, defined benefit pension plan.

30 While the WMLP Debtors are not parties to the UMWA CBAs, in an abundance of caution and for the avoidance of doubt, the relief sought in this Motion would authorize the WMLP Debtors (a) to reject under 11 U.S.C. § 1113 any obligations the WMLP Debtors may have under the UMWA CBAs and (b) to terminate under 11 U.S.C. § 1114 any Retiree Benefit obligations the WMLP Debtors may have in the event someone were to later argue that the WMLP Debtors had obligations under the UMWA CBAs or with respect to Retiree Benefits, including under the Coal Act, as a result of WLB providing employees subject to the Kemmerer CBA to the WMLP Debtors, the WMLP Debtors' relationship with the WLB Debtors, or for any other reason.

have no relationship to the asset (the Kemmerer mine) at which the employees work. Accordingly, it is useful to consider how the WMLP Debtors fit in the Debtors' corporate structure, and which Debtors are obligated on the various debt instruments described in the table above:



24. Below, the WLB Debtors address each obligation they seek authority to reject or terminate in more detail: (1) all Retiree Benefits; and (2) the UMWA CBAs.

25. ***First***, the Debtors are seeking to terminate all Retiree Benefits pursuant to 11 U.S.C. § 1114. These obligations, which are described in the table below, are massive:

Category Of Retirees	Description	Aggregate Estimated Amount of Liability
"Heritage" Retirees (Coal Act and Non-Coal Act liabilities related to mines no longer owned or operated by the WLB Debtors)	UMWA-represented retirees who worked at mines in Virginia, West Virginia and Colorado that were previously operated by WLB which have been shut down or sold (together with their spouses and dependents). Approximately $113.8 MM of the Debtors' Heritage Retiree Medical Obligations are governed by expired CBAs and are not subject to the Coal Industry Retiree Benefit Act of 1992 (the "Coal Act"); approximately $98.2 MM are also governed by the Coal Act (the retirees who receive benefits pursuant to the Coal Act are referred to herein as the "Coal Act Retirees").	$212 MM
Active Mines - Kemmerer & Beulah Retirees	Retirees who worked at the Debtors' still-operative Kemmerer and Beulah mines, together with their spouses and dependents (the "Kemmerer Retirees" and the "Beulah Retirees," respectively). These obligations are governed by the UMWA CBAs. None of the obligations to the Kemmerer Retirees, totaling $76.9 MM, or Beulah Retirees, totaling $40.5 MM, are governed by, or currently backstopped by, the Coal Act.	$117.4 MM
Total		$329.4 MM[31]

26. Historical context illustrates some of the reasons the Retiree Benefits are so massive and why no buyer is willing to assume them. The WLB Debtors' "Heritage" liabilities (which include liabilities now covered by the Coal Act) are not only very large, but they also relate to assets that the WLB Debtors acquired and obligations the WLB Debtors incurred decades ago, with no connection to the Debtors' current business.

[31] Prudential (the Debtors' actuary) is in the process of updating these figures as of December 31, 2018, and the Debtors will provide updated figures once they are available.

27. In the late 1940s, Westmoreland Coal Company began mining operations in the central Appalachian region of West Virginia and Virginia. The last of these mines closed or was sold in the mid-1990s. Most of these miners were covered under UMWA collective bargaining agreements, the last of which was signed in 1993 (together, the "Heritage CBAs").

28. To be eligible for retiree health care under the Heritage CBAs, a miner had to retire and either have at least twenty years of credited service or be at least 55 years of age and have at least ten years of credited service. In 1992, the Coal Act mandated certain types of retiree medical benefits for eligible retirees (and their spouses and dependents) who retired before October 1, 1994. However, the Heritage CBAs contained provisions that effectively extended the Coal Act deadline and required the WLB Debtors to continue providing benefits for certain beneficiaries who retired after September 30, 1994. This "Heritage" group also includes employees who retired after September 30, 1994, whose last signatory employer was Basin Resources, Inc. (another former affiliate of the WLB Debtors that closed years ago). In sum, the Heritage group consists of retirees who worked at (now-closed) Appalachian mines or the (now-closed) Basin mine in Colorado.

29. The Heritage CBAs required (as does the Coal Act) near first-dollar retiree medical coverage: there are no premiums or co-insurance, and deductibles and co-pays are very low. The last Heritage CBA was signed in 1993, and it contained an obligation to pay benefits "for life." While there has been significant litigation on the meaning of the "for life" language in the Heritage CBAs, some courts have upheld the "lifetime" obligation to provide retiree medical benefits. Perhaps more relevant to this Motion, as part of its 1999 Bankruptcy Master Settlement Agreement, Westmoreland Coal Company agreed to provide the contractual retiree medical benefits until a federal court permitted them to modify or discontinue such benefits.[32]

[32] *See* Exhibit 16, Bankruptcy Master Settlement Agreement.

30. The WLB Debtors seek to terminate the Retiree Benefits with respect to the "Heritage," Kemmerer and Beulah retirees (and their spouses and dependents) because they have no other choice. Indeed, both the WLB Debtors' debtor-in-possession financing order and the Cash Collateral Order require that the Debtors obtain entry of an order terminating these benefits pursuant to section 1114 by no later than February 13, 2019.[33] Moreover, during the entire period (pre-petition and post-petition) in which both the WLB Debtors and the WMLP Debtors actively marketed their assets, no potential buyer for any of these assets has expressed any willingness to acquire any of the Debtors' assets subject to these liabilities.[34]

31. ***Second***, the Debtors are seeking to reject the Beulah CBA. The Beulah mine is owned by Dakota Westmoreland Corporation, a subsidiary of WLB.[35] Employees at the mine are governed by the Beulah CBA.[36] Mine operations at Beulah are projected to last, at the longest, through 2024.[37] Beulah is also burdened by $40.5 million in lifetime retiree medical obligations to former employees.[38]

32. Beulah is a "Non-Core Mine" under the RSA. Absent the RSA (which requires the Stalking Horse to agree to take all Non-Core Assets, free and clear of liabilities, to the extent they are not sold to a third party), the Stalking Horse would not choose to acquire it at all.[39] Moreover, despite months of active marketing, no potential buyer is willing to acquire Beulah if it is burdened by the Beulah CBA or the Retiree Benefits.

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33 *See* ECF No. 896.

34 *See* Ex. 3, Puntus Decl. ¶¶ 26-30; Ex. 7, Cowan Decl. ¶ 15.

35 *See* Ex. 4, Stein Decl. ¶ 5.

36 *Id.*

37 *Id.* ¶ 6.

38 *Id.* ¶ 5.

39 Ex. 3, Puntus Decl. ¶¶ 11, 22.

33. Beulah currently has one customer, and its contract with that customer lasts through 2021. And Beulah's retiree medical and pension expenses cannot be sustained. Indeed, Beulah is projected to be cash flow negative through the current projection period absent the modifications requested. Even with the CBA and retiree modifications requested by the WLB Debtors, Beulah is projected to become only marginally cash flow positive:[40]

	2019E	2020E	2021E	2022E
Net Cash Flow(1)	($0.9)	($0.4)	($1.8)	($2.4)
Plus: Project Ascend Benefit(2)	0.7	3.0	0.7	0.6
Net Cash Flow Pro Forma for Ascend Benefit	($0.2)	$2.6	($1.1)	($1.9)
Plus: Illustrative Removal of Pension and OPEB Impact(3)	0.9	1.4	1.9	1.9
Net Cash Flow Pro Forma for Ascend, Pension and OPEB Impact	$0.7	$4.0	$0.8	$0.0

Note: USD in millions.
(1) Reflects mine-level free cash flow (net of capital lease payments). Excludes any corporate and heritage costs.
(2) Reflects Project Ascend savings overlay adjustments to the Life of Mine financial projections. Aggregate savings estimates do not reflect cost of professional fees or SG&A savings.
(3) Reflects complete removal of pension and OPEB cash flow impact.

34. Given its cash flow negativity, retiree medical burden, projected life-of-mine asset reclamation obligations (which are substantial), and minimal upside given the mine's expected closure in 2024, it is unsurprising that no buyers are interested in acquiring Beulah outside of a free-and-clear sale that includes the rejection of the Beulah CBA and the Retiree Benefits.[41]

40 Ex. 4, Stein Decl. ¶ 6.

41 *Id.* ¶ 7.

35. ***Third***, the WLB Debtors seek to reject the Kemmerer CBA and terminate the Retiree Benefits relating to the Kemmerer mine.[42] The assets of the WMLP Debtors, including the Kemmerer mine, are subject to a separate WMLP sale process that commenced pre-petition. Throughout the process, no potential buyer has been willing to acquire the assets subject to the existing Kemmerer CBA or any of the Retiree Benefits.[43] Among other things, the Kemmerer CBA includes retiree medical obligations that exceed $70 million; the Kemmerer CBA also requires contribution to a defined benefit pension plan that faces a potential termination liability exceeding $70 million; and the Kemmerer CBA requires WLB to pay for an extremely generous medical plan for active union employees that no buyer would be willing to retain or duplicate.

36. Given the uncertainty of future business opportunities at the Kemmerer mine, burdening any purchaser with any legacy labor liabilities is not viable and would eliminate the already limited pool of potential buyers. The challenges any buyer acquiring the Kemmerer assets faces include not just those facing the coal industry generally, but also those presented by the Kemmerer mine's current customer mix. The Debtors will present additional evidence at the hearing on the Motion demonstrating the specific risks at Kemmerer. These risks are real, particularly given Kemmerer's high degree of customer concentration, and are reflected in the existing bids for the WMLP Debtors' assets. Specifically, none of the bidders for the WMLP Debtors' assets are prepared to assume any risk of exposure to the Debtors' legacy liabilities, including the Kemmerer CBA or the Retiree Benefits.[44]

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42 *See* Ex. 5, Goodheart Decl. ¶ 7 & Appendix B; Ex. 7, Cowan Decl. ¶¶ 15-16.

43 *See* Ex. 5, Goodheart Decl. ¶ 24; Ex. 7, Cowan Decl. ¶¶ 15-16.

44 *See* Ex. 4, Stein Decl., ¶ 8; Ex. 7, Cowan Decl., ¶¶ 15-16.

37. Moreover, as noted above, the WMLP Debtors own the Kemmerer mine, but WLB employs the workers at the Kemmerer mine, and their employment relationship with WLB is governed by the Kemmerer CBA.[45] Currently, pursuant to a shared services agreement, WMLP reimburses WLB for the costs of employing those workers.[46] This arrangement works, for now, because of the existing relationship between WLB and the WMLP Debtors.[47]

38. Going forward, however, the Stalking Horse for the WLB Debtors' assets does not contemplate the purchase of the Kemmerer mine, which is subject to a separate sale process. Thus, putting aside the challenging economics and the substantial legacy liabilities, the WLB Debtors must reject the Kemmerer CBA for an independent, practical reason: the Kemmerer CBA is between the UMWA and Westmoreland Coal Company, an entity that will no longer have any relationship with the mine in which the employees work and will liquidate pursuant to the terms of the WLB Debtors' chapter 11 plan.[48]

C. The Debtors' Marketing And Sale Processes

39. Before filing these chapter 11 cases, the Debtors tried to cut costs. Unfortunately, these initiatives were insufficient to avoid a liquidity crisis in the spring of 2018 when the WLB Debtors faced the real possibility of a free-fall bankruptcy filing. In order to avoid a free-fall filing and the potential ceasing of operations, the WLB Debtors were able to negotiate a bridge financing facility provided by their secured creditors.

40. The bridge loan provided the WLB Debtors with sufficient runway to negotiate a restructuring transaction with their secured lenders. These negotiations ultimately resulted in a

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45 Ex. 5, Goodheart Decl. ¶ n.3.

46 *See id.* ¶ n.3.

47 *Id.* ¶ n.3.

48 Ex. 4, Stein Decl. ¶¶ 21-22.

holistic, consensual restructuring proposal, embodied in the RSA. The RSA contemplates a going-concern sale of the WLB Debtors' Core Assets to the Stalking Horse, subject to other and higher offers solicited through an extensive marketing process. The Stalking Horse Bid was a competitive baseline bid for an auction of the WLB Debtors' Core Assets, allowing stakeholders to ensure that the WLB Debtors obtain the highest or otherwise best offer for their assets. The proposed sale contemplated by the RSA would preserve WLB's operations and save over a thousand jobs.

41. Critically, the Stalking Horse Bid also provides that the Stalking Horse would acquire the WLB Debtors' Non-Core Assets (free and clear of the Retiree Benefits and the UMWA CBAs) if no other purchaser submits a proposal to buy them. In other words, the Stalking Horse Bid is the lynchpin in a global solution for all of the WLB Debtors' assets, which (absent a better option) will be sold to the Stalking Horse, preserving the Debtors' operations as a going concern.

42. Significantly, the Stalking Horse refused (and continues to refuse) to assume any of the WLB Debtors' Retiree Benefit obligations (including the WLB Debtors' Coal Act obligations) or buy any of the WLB Debtors' assets burdened by such obligations. Thus, the RSA requires that any "Transferred Assets" be sold by the WLB Debtors "free and clear" of excluded liabilities pursuant to sections 105, 363, and 1123 of the Bankruptcy Code.[49] Furthermore, the RSA provides that it shall be a closing condition of the sale to the Stalking Horse that:

> the Bankruptcy court shall have granted motions filed by the applicable Seller (i) pursuant to section 1113 of the Bankruptcy Code terminating and/or modifying CBAs in connection with the Transferred Assets as requested by Purchaser and (ii) ***pursuant to section 1114 of the Bankruptcy Code modifying retiree benefits in connection with the Transferred Assets as requested by the Purchaser***."[50]

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[49] *See* Ex. 9, RSA at 3 ("This Term Sheet describes a proposed sale by Sellers of all of their right, title, and interest in, to, and under the Transferred Assets … to Purchaser, ***free and clear of any and all pledges, options, charges, liabilities, liens, claims, encumbrances, or interests except the Assumed Liabilities (as defined below)***, and the assumption by Purchaser of the Assumed Liabilities, pursuant to sections 105, 363 and 1123 of the Bankruptcy Code….") (emphasis added).

[50] Ex. 9, RSA at 10 ("Closing Conditions") (emphasis added).

43. Thus, the Stalking Horse's bid requires the sale of the WLB Debtors' assets to be free and clear of any UMWA CBA and Retiree Benefits.[51] In addition, the Stalking Horse is not willing to assume the Beulah CBA, and requires the rejection of the Kemmerer CBA. And after months of marketing the WLB Debtors' assets for sale, the Bid Deadline has now passed. No bidder has suggested that it might be willing to pay any of the Retiree Benefits, nor has any bidder been willing to assume the Beulah CBA or the Kemmerer CBA.[52]

44. In parallel to the WLB Debtors' restructuring efforts, the WMLP Debtors engaged with their secured lenders on the terms of a restructuring. As part of those pre-petition discussions, the WMLP entered into a series of waivers of default under the WMLP term loan facility conditioned on the development of a sale protocol (the "WMLP Sale Protocol") and implementation of a robust sale process for the WMLP Debtors' assets, which began pre-petition.

45. In connection with the filing of these chapter 11 cases, the WMLP Debtors negotiated with their senior secured term lenders for the consensual use of cash collateral pursuant to the Cash Collateral Order,[53] which provided the liquidity needed to continue the WMLP Debtors' operations (including paying the employees at the Kemmerer mine) post-petition. The Cash Collateral Order requires the Debtors to continue pursuing the sale of the WMLP Debtors' assets, consistent with the WMLP Sale Protocol, and that any such sale be free and clear of, among other things, any successor liability, pension, retiree health, or related obligation, and that the successorship clause in the Kemmerer CBA be eliminated (or that the Court authorize the rejection of the Kemmerer CBA pursuant to section 1113).[54] The Cash Collateral Order also conditions the

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51 Ex. 3, Puntus Decl ¶ 23.

52 *Id.* ¶¶ 26-30.

53 *See* ECF No. 499.

54 *See* ECF No. 521.

WMLP Debtors' continued use of cash collateral on the WLB Debtors obtaining an order (a) granting the Motion, or (b) approving a settlement in which the Debtors are able to implement the needed modifications consensually.

46. The WMLP Sale Protocol requires, among other things, that: (i) Lazard Freres & Co. LLC ("Lazard"), the investment banker retained by the Conflicts Committee of the Board of Directors of WMLP's general partner (the "Conflicts Committee") and the WMLP Debtors, administer the process for the sale of the WMLP Debtors' assets; (ii) a representative of Alvarez & Marsal, the Debtors' restructuring adviser, work exclusively on WMLP Debtor-related matters and assist Lazard in fulfilling requests from potential bidders for such assets; (iii) WLB and management of the WMLP Debtors and their respective advisors cooperate with the Conflicts Committee and its professionals; (iv) the WLB Debtors' management and advisors cooperate and periodically consult with the WMLP Debtors' lenders and their advisors; and (v) Lazard provide regular updates to the WMLP lenders' financial advisor regarding the sale process.

47. To ensure a fair and independent process for the sale of the WMLP Debtors' assets, a committee comprised of WLB representatives and a member of the Conflicts Committee (the "Oversight Committee") was created to interact with Lazard in the administration of the marketing process pursuant to WMLP's Sale Protocol. In addition, to ensure the impartiality of the Oversight Committee, the WMLP Sale Protocol requires that in the event a conflict of interest arises related to WLB, such as an event where a WLB Debtor makes a bid for some or all of the WMLP Debtors' assets, the WLB representatives from the Oversight Committee will recuse themselves until such bid is irrevocably withdrawn. Finally, the Conflicts Committee retains the ultimate authority to approve or decline to approve any sale of all or substantially all of the WMLP Debtors' assets, including with respect to any sale of assets to the WLB Debtors.

48. While the sale process for the WMLP Debtors' assets has generated several bids, no bidder is willing to assume the Kemmerer CBA or pay any of the Retiree Benefits.[55] In fact, each bid received would require the WMLP Debtors to sell their assets free and clear of, among other things, any CBA and pension, retiree and related obligations and liabilities.[56]

49. Absent another option for both the WLB Debtors and the WMLP Debtors (which, to date, does not exist and is not forthcoming), the WLB Debtors must modify the Retiree Benefits to consummate their proposed sale transactions and avoid liquidation. Similarly, absent any better option for the WLB Debtors and the WMLP Debtors, the WLB Debtors must reject the Kemmerer CBA and Beulah CBA in order to consummate their proposed sale transactions.[57]

50. If the WLB Debtors and WMLP Debtors are unable to consummate the proposed sale transactions, which, in turn, require the rejection of the UMWA CBAs and termination of Retiree Benefits, these Debtors will be unable to reorganize. Moreover, the WLB Debtors and WMLP Debtors risk losing access to liquidity under their respective financing orders if, absent a settlement with the UMWA, they are unable to obtain the relief sought in the Motion.

51. Thus, rejection of the UMWA CBAs and termination of the Retiree Benefits provides the only hope for the Debtors' operations to be sold as going-concerns, maximizing value for all stakeholders and ensuring that the majority of the Debtors' employees remain employed. The alternative of liquidation destroys value and jobs, results in less remediation, and causes all stakeholders—including the Debtors' employees and retirees—to suffer even more.

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55 Ex. 7, Cowan Decl. ¶¶ 15-16; *see also* Ex. 3, Puntus Decl. ¶ 30.

56 *Id.* ¶ 16.

57 *Id.*; *see also* Ex. 3, Puntus Decl. ¶ 27.

D. The Debtors' Good Faith, Pre-Petition Efforts To Negotiate With The UMWA

52. The Debtors sought to begin negotiations with the UMWA before filing for chapter 11.[58] But the UMWA refused to engage in negotiations prior to the petition date.[59] Indeed, the Debtors reached out to the UMWA a second time pre-petition in an attempt to bargain in good faith regarding other issues that remained outstanding.[60] The UMWA declined.[61]

E. The Debtors' Good Faith, Post-Petition Efforts To Negotiate With The UMWA

53. The Debtors continued to engage in regular communication with the UMWA after commencing these chapter 11 cases.

54. On October 12, 2018, the Debtors received a letter from the UMWA directing them to communicate with the President of the UMWA regarding bargaining.[62] And that is exactly what the Debtors did. On October 23, 2018, the Debtors sent a detailed written proposal to the UMWA requesting modifications of the Beulah CBA and Kemmerer CBA, along with termination of the Retiree Benefits (including all contributions by the Debtors on account of Coal Act benefits).[63] The reasons were straightforward: the Debtors could not reorganize without the changes to the UMWA CBAs and the Retiree Benefits that the Debtors had requested in their Proposal.[64]

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58 *See* Ex. 10, 2018-09-06 Letter from Westmoreland re First Proposal.

59 *See* Ex. 11, 2018-09-14 Letter from UMWA to WLB (stating the Debtors' "letter requesting formal bargaining under Sections 1113 and 1114 of the United States Bankruptcy Code" was "premature," asking to be notified once the Company filed). In addition, in an effort to begin negotiations with UMWA, the Debtors' General Counsel and lead outside labor negotiator travelled to UMWA headquarters and met with the UMWA's president, who made clear that he would not negotiate with the Debtors at that time.

60 *See* Ex. 12, Letter from D. Goodheart to M. Dalpiaz dated 10/1/2018.

61 Ex. 5, Goodheart Decl. ¶ 15.

62 *Id.*; *see also* Ex. 13, Letter to D. Goodheart from M. Dalpiaz dated 10/12/2018.

63 Ex. 5, Goodheart Decl., ¶ 16 & Appendix B; *see also* Ex. 14, Letter to B. Sanson from J. Grafton dated 10/23/2018. The Debtors had worked with the Stalking Horse and with the WMLP secured lenders to develop the Debtors' proposal. Ex. 5, Goodheart Decl. ¶ 16.

64 *Id.* ¶ 16.

55. The UMWA responded with a barrage of information requests. The Debtors fulfilled them, providing substantial information to enable the UMWA to evaluate their Proposal.[65] To that end, the Debtors and the UMWA entered into a stipulated protective order to govern the sharing of confidential data, and the Debtors set up a web-based data room to facilitate information sharing on a confidential basis.[66] The Debtors spent substantial time fulfilling the UMWA's data requests. Ultimately, the UMWA's lead negotiator confirmed on-the-record that the UMWA had no further information requests.[67]

56. The Debtors met with the UMWA six (6) times since the petition date, either telephonically or in person at the UMWA's Headquarters in Triangle, Virginia, including as recently as the day before this Motion was filed.[68] The UMWA, unfortunately, never submitted a written response, either to the Debtors' initial October 23, 2018, proposal, or to the Debtors' subsequent January 9, 2019, proposal. Nor did the UMWA at any point identify an alternative that would permit the Debtors to reorganize or otherwise remain a going concern.[69]

F. The Debtors' Good Faith Efforts To Negotiate With Respect To Coal Act Benefits Backstopped By The Coal Act Funds

57. The Debtors advised all parties-in-interest on the first day of these cases that, unless an agreement could be reached after good faith negotiations, the Debtors intended to seek an order from the Court under section 1114 of the Bankruptcy Code modifying or terminating all of their Retiree Benefit obligations, including those under the Coal Act.[70]

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65 *Id.* ¶ 21.

66 ECF No. 551.

67 Ex. 5, Goodheart Decl. ¶ 23.

68 *Id.* ¶ 18.

69 *Id.* ¶ 17.

70 *See* Ex. 15, 10/9/18 Hrg. Tr. 32-34.

58. As of the Petition Date, the Debtors understood from discussions with the UMWA that it may have been willing to negotiate on behalf of Coal Act retirees—as the UMWA had done in several prior cases.[71] Thus, the Debtors made a proposal to the UMWA on October 23, 2018 pursuant to 11 U.S.C. §§ 1113 and 1114.[72]

59. In the Debtors' October 23 proposal, the Debtors proposed to the UMWA that it agree, on behalf of all individuals that it currently or previously represented, to certain modifications to each of the UMWA CBAs, as well as modifications to retiree benefits for all Heritage, Beulah, and Kemmerer retirees. The Debtors' October 23, 2018, proposal also covered all benefits and other payments provided in or required by the Coal Act.[73]

60. That same day, on October 23, 2018, the trustees of the Coal Act Funds initiated an adversary proceeding seeking a judicial declaration that the Debtors' obligations under the Coal Act are not "retiree benefits" subject to modification or termination under section 1114 of the Bankruptcy Code.[74] The Coal Act Funds sought this judicial declaration even though every published decision that had addressed whether Coal Act obligations are included within the scope of section 1114 had answered that question in the affirmative.[75]

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71 *See In re Horizon Nat. Res. Co.*, 316 B.R. 268, 273 (Bankr. E.D. Ky. 2004) (holding that the UMWA was the "authorized representative" of the Coal Act retirees under § 1114); *Alpha Nat. Res.*, 552 B.R. at 328-30 (holding that the UMWA was the "authorized representative" of Coal Act retirees under § 1114).

72 *See* Ex. 14, 10/23/18 Proposal.

73 *Id*.

74 *See* ECF No. 247; *see also* Adv. Proceeding 18-3300, United States Bankruptcy Court, Southern District of Texas.

75 *See Alpha Nat. Res.*, 552 B.R. at 337-38 ("The Court [] finds that the Debtors' obligations under the Coal Act are 'retiree benefits' [under section 1114 of the Bankruptcy Code]."); *UMWA 1974 Pension Plan & Trust v. Walter Energy, Inc*., ("*Walter Energy II*"), 579 B.R. 603, 617 (N.D. Ala. 2016) ("[B]ecause Debtors maintained in part the Coal Act Plans by funding them, the Plans are retirement benefits subject to Section 1114."); *Walter Energy*, 542 B.R. at 884 ("[T]he Debtors may use section 1114 to modify Retiree Benefits arising under the Coal Act if the other requirements of section 1114 are satisfied."); *Horizon Nat. Res.*, 316 B.R. at 276 ("The court concludes that benefits provided pursuant to the Coal Act constitute 'retiree benefits' within the meaning of § 1114 of the Bankruptcy Code.")

61. The Coal Act Funds simultaneously filed a motion to appoint their own representatives as a retiree committee under section 1114 in the event that the Court ruled against the Coal Act Funds in their adversary proceeding.[76] The Coal Act Funds also took the position that the UMWA had no authority to negotiate on behalf of those receiving benefits articulated in the Coal Act (who are all former UMWA employees and their eligible beneficiaries).[77]

62. On November 12, 2018, the Debtors filed a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) in the Coal Act Funds' adversary proceeding.[78] Two weeks later, on November 27, 2018, the Coal Act Funds filed their response and cross-moved for judgment on the pleadings pursuant to Federal Rules of Civil Procedure 12(c) and 56.[79] The Court heard argument on November 29, 2018.

63. On December 29, 2018, the Court granted the Debtors' motion for judgment on the pleadings and denied the Coal Act Funds' cross-motion for judgment on the pleadings.[80] Consistent with all published authority on point, the Court ruled that a debtor's obligations under the Coal Act are subject to modification or termination under section 1114.[81]

64. When the Coal Act Funds challenged the UMWA's ability to represent Coal Act retirees, the UMWA was reluctant to do so during section 1113 and 1114 negotiations. Accordingly, on November 16, 2018, the Court issued an order directing the United States Trustee

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76 *See* ECF No. 248.

77 *See* Adv. Proceeding 18-3300, Complaint, ECF No. 1, ¶ 70 (alleging that "[t]he Debtors have attempted to negotiate the elimination of their Coal Act obligations with the UMWA" but "[t]he UMWA has no authority to agree to eliminate the Debtors' Coal Act obligations").

78 *See* Adv. Proceeding 18-3300, ECF No. 22.

79 *Id.* at ECF No. 26.

80 *Id.* at ECF No. 53.

81 *Id.* at p. 11, ¶ 37.

(the "UST") to appoint an official retiree committee (the "Retiree Committee") to serve as the "authorized representative" of affected Coal Act retirees and their eligible dependents.[82] Thereafter, for over a month, the UST actively solicited Coal Act retirees to serve on the Retiree Committee.[83] But despite the efforts of the UST and the Debtors to find Coal Act Retirees willing to serve on a committee, no Coal Act-eligible retiree was willing to serve.[84]

65. Because no Coal Act retiree could be found to serve on a Retiree Committee, the Debtors moved the Court to appoint an independent fiduciary to represent the interests of Coal Act beneficiaries in the section 1114 process.[85] The Court held a hearing and, under 11 U.S.C. § 105, appointed three independent representatives of the Coal Act beneficiaries to facilitate the negotiations described in 11 U.S.C. § 1114: Hon. Leif Clark, Sylvia Mayer, and Allison Byman (the "Coal Act Retiree Representatives").[86]

66. The Debtors had presented their section 1114 proposal—the same one that they presented to the UMWA on October 23, 2018—to the Coal Act Retiree Representatives in the motion for their appointment.[87] The Debtors subsequently met with the Coal Act Retiree Representatives and provided substantial diligence to them.[88] As of the filing of this Motion, the Coal Act Retiree Representatives are still considering the Debtors' proposal.

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82 ECF No. 526.

83 The Debtors provided contact information to the UST on all of the Coal Act retirees for whom the Debtors had contact information. *See* ECF No. 917, ¶ 4. By contrast, the Coal Act Funds only asked that the UST place on the committee two non-retiree employees of the Coal Act Funds. *See* ECF No. 892-1.

84 ECF No. 1023, ¶ 2.

85 ECF No. 886.

86 *See* ECF No. 1023.

87 *See id.* ¶ 18.

88 *See* Ex. 8, Ossi Decl., ¶¶ 3, 7.

G. The Debtors' Proposal

67. The Debtors' proposal is attached as Exhibit 2. Generally, the Debtors propose that:

- With respect to the ***Kemmerer CBA***: (a) the defined benefit pension plan would be frozen; (b) the retiree medical obligations would be either settled with a single lump-sum payment, or by continuation for up to a year (up to the capped settlement amount); (c) any successorship language in the Kemmerer CBA be removed such that a buyer of the Kemmerer assets can acquire such assets unburdened by the obligations under the Kemmerer CBA; and (d) other terms and conditions be modified in a manner consistent with what any buyer capable of acquiring the Kemmerer assets would demand before agreeing to acquire those assets;[89]

- With respect to the ***Beulah CBA***: (a) the existing defined benefit pension plan would be frozen; (b) the retiree medical obligations be settled with a single lump-sum payment or by continuation for up to a year (up to the capped settlement amount); and (c) any successorship language in the Beulah CBA be removed, such that a buyer can acquire the asset unburdened by the CBA; and

- With respect to the ***Heritage Benefits***, all Coal Act-backstopped obligations be terminated and all non-Coal Act-backstopped obligations be settled with a lump-sum payment or continuation for up to a year (up to the capped settlement amount).

68. The Debtors would prefer that they had sufficient funds to pay the Retiree Benefits. They do not. In fact, the Debtors have no funds to pay the Retiree Benefits, but have negotiated in good faith with the Stalking Horse in an effort to secure at least some funds to pay some amount of Retiree Benefits. The Stalking Horse has agreed to make $6 million available to the Debtors to resolve the Retiree Benefits. In contrast, in a liquidation, the retirees (except those whose benefits are backstopped by the Coal Act Funds) would receive nothing.[90]

69. The Debtors proposed that every dollar of the $6 million made available by the Stalking Horse be made available to the non-Coal Act retirees. The reason is simple: under current

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89 The specific modifications proposed to the Kemmerer CBA reflect the terms and conditions the WMLP Lenders believe, based on advice from a reputable labor consultant, would be required for any buyer to accept the CBA.

90 The $6 million settlement is available for Heritage retirees (excluding Coal Act retirees), Beulah retirees, and Kemmerer retirees.

law, these non-Coal Act retirees do not have a "backstop."[91] By contrast, if the WLB Debtors' obligations to make premium payments to the Coal Act Funds or to pay benefits to participants in the Debtors' Individual Employer Plan (IEP) for Coal Act Retirees are terminated, the obligation to pay benefits to Coal Act Retirees simply shifts to the Coal Act Funds—alternative sources of payment that are ultimately backstopped by the federal government.[92]

70. Congress provided multiple sources for backstop funding in the event an operator with Coal Act obligations, such as WLB, stops paying premiums into the Coal Act Funds or providing coverage to Coal Act Retirees in an operator's IEP.[93] Where an eligible beneficiary is not assigned to an operator, he is "unassigned" but his benefits are still paid.[94] Under the Coal Act and the Surface Mining Control and Reclamation Act ("SMCRA"), benefits for unassigned miners are funded through annual transfers from the Abandoned Mine Land Reclamation Fund ("AML Fund") and the federal Treasury.[95] To the extent annual transfers are not enough to cover the costs, unassigned miners' benefits are funded by other operators through a pro-rata share of unassigned

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91 Lobbying efforts to secure federal protection for Heritage, non-Coal Act retirees are ongoing, and legislation that would do so for the Westmoreland Heritage, non-Coal Act retirees has been introduced in the Senate as the "American Miners Act of 2019." *See, e.g.*, "American Miners Act of 2019," *available at https://www.jones.senate.gov/imo/media/doc/116th%20Congress%20Miners%20Pensions%20AML%20one%20pager%201-2-19.pdf*; "Warner, Kaine Introduce Legislation To Pensions and Health Care For Virginia Coal Miners, *available at* https://www.kaine.senate.gov/press-releases/warner-kaine-introduce-legislation-to-secure-pensions-and-healthcare-for-virginia-coal-miners ("But the 2018 bankruptcy of Colorado-based Westmoreland Coal Co. has endangered health care benefits for additional miners and dependents – including 500 people in Virginia. Today's legislation will extend the fix to ensure that miners who are at risk due to 2018 coal company bankruptcies will not lose their healthcare.").

92 *See, e.g.*, *Walter Energy*, -- F.3d -- (11th Cir. 2018), Slip Op. at 16, 18, 73 ("§ 1114 of the Bankruptcy Code permitted the bankruptcy court to terminate Walter Energy's obligation to fund its retirees' health care and, in effect, **shift that obligation to the federal government**") (emphasis added); *Holland v. Williams Mountain Coal Co.*, 256 F.3d 819, 821 (D.C. Cir. 2001) ("[T]here is no chance of the miners being denied their benefits.").

93 26 U.S.C. § 9711.

94 *See U.S. Steel Corp. v. Astrue*, 495 F.3d 1272, 1277 (11th Cir. 2007); *Walter Energy II*, 2016 WL 470815, at *6.

95 *See U.S. Steel Corp.*, 495 F.3d at 1276-77.

beneficiaries' premiums.[96] But to date, annual transfers have been overwhelmingly sufficient, as "Congress designed the Coal Act to protect against the 'chance of the miners being denied their benefits' because of the bankruptcy of a coal operator such as the Debtors."[97]

71. The reality is that the Coal Act Funds are fully solvent, and there is no reasonable risk of them lacking funds to pay benefits. The Debtors are current on their premium payments to the Coal Act Funds, and have in place two letters of credit for a total of $9,068,000. Regardless, annual transfers from the AML Fund and the Treasury will surely cover any gap in funding, as transferred amounts have never even come close to reaching the cap.[98] Accordingly, no matter what happens here, "there is no chance of [Coal Act-covered] miners being denied their benefits."[99]

72. Given this reality, it would not be fair and equitable to allocate a portion of a limited, finite sum of funds to the Coal Act Retirees (who have a backstop) where the Kemmerer, Beulah, and Heritage, non-Coal Act retirees will (in the absence of legislative change) only receive the limited benefits that the WLB Debtors can secure from their buyer.

73. The Stalking Horse has made clear that absent acceptance of the Proposal or the granting of this Motion, the Stalking Horse will not proceed with the transaction outlined in the RSA.[100] All bidders for the WMLP Debtors' assets have indicated that their bids are conditioned on substantial modifications to the Kemmerer CBA or its rejection.[101] Accordingly, the Debtors' choice is stark: ask the Court to grant the relief sought in this Motion, or liquidate.

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96 *See* 26 U.S.C. § 9704(d)(2).

97 *Walter Energy II*, 2016 WL 470815, at *6.

98 *See*, *e.g.*, U.S. Dep't of the Interior, Budget Justifications and Performance Information FY 2019, Office of Surface Mining Reclamation and Enforcement, 112 (total 2017 transfer of treasury funds is $309.6 million).

99 *Holland*, 256 F.3d at 821.

100 Ex. 3, Puntus Decl., ¶ 24.

101 *See* Ex. 7, Cowan Decl., ¶¶ 15-16; Ex. 3, Puntus Decl. ¶ 30.

74. In a liquidation, the Debtors' assets would be sold piecemeal. In a liquidation, none of the CBAs would be assumed; all pension plans related to the Debtors would be terminated; and none of the Retiree Benefits would be paid by the Debtors. The Proposal does require sacrifice from the Debtors' employees and retirees, but there is no better option. In this Motion, the Debtors are asking for relief that is necessary for the Debtors' operations to emerge from bankruptcy as going concerns.

V. ARGUMENT

A. Legal Standards

75. To reject collective bargaining agreements or modify retiree benefits, a debtor must comply with sections 1113 and 1114 of the Bankruptcy Code. 11 U.S.C. §§ 1113(c), 1114(g).

76. Pursuant to section 1113, a court "shall approve an application for rejection of a collective bargaining agreement" if the debtor satisfies the following requirements:

(a) The debtor must make a proposal to modify its collective bargaining agreements as necessary for its reorganization;

(b) The proposal must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably;

(c) The proposed modifications must be based on the best information available at the time of the proposal;

(d) The debtor must provide the union with information needed to evaluate the proposal;

(e) The debtor must meet at reasonable times to negotiate;

(f) The debtor must confer in good faith in attempting to reach mutually satisfactory modifications;

(g) The union must decline the proposal without good cause; and

(h) The balance of the equities must clearly favor rejection.[102]

[102] *See, e.g.*, *In re Appletree Mkts., Inc.*, 155 B.R. 431, 437 (S.D. Tex. 1993) (citing *In re Am. Provision Co.*, 44 B.R. 907, 909 (Bankr. D. Minn. 1984)); *In re Tex. Sheet Metals, Inc.*, 90 B.R. 260, 263 (Bankr. S.D. Tex. 1988) (same);

77. The requirements under section 1114 are essentially the same.[103] As a result, courts consistently analyze motions for relief under sections 1113 and 1114 together.[104]

78. Under both sections 1113 and 1114, once the debtor establishes that its proposal is necessary and made and negotiated in good faith, the affected union must produce sufficient evidence to justify its refusal to accept the proposal.[105] Thus, "[a]s a practical matter, once the debtors have made their prima facie case, the burden shifts to the union to show that the debtor did not supply sufficient information, that the debtor did not bargain in good faith in addition to demonstrating that the union had good cause to refuse the proposal."[106]

79. Where (as here) chapter 11 debtors are being sold rather than reorganizing, courts apply the requirements for section 1113(c) relief "contextually, rather than strictly," with the "impending liquidation of the Debtor firmly in mind."[107] Accordingly, the question is whether the Debtors' requested relief is necessary for the Debtors to complete and close their going-concern sales.

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see also Patriot Coal, 493 B.R. at 112.

103 *In re Horsehead Indus., Inc.*, 300 B.R. 573, 583 (Bankr. S.D.N.Y. 2003) ("Sections 1113 and 1114 govern, respectively, the rejection of collective bargaining agreements and the termination of retiree benefits. The statutory requirements under both sections are the same."); *In re Ionosphere Clubs, Inc.*, 134 B.R. 515, 520 (Bankr. S.D.N.Y. 1991) ("[C]ompliance with § 1114 is substantively and procedurally the same as compliance with § 1113."); *see also Horizon Nat. Res.*, 316 B.R. at 281 (the "requirements for modification of retiree benefits are . . . substantially the same as the requirements for rejection of collective bargaining agreements").

104 *Id.* at 279; *see also Walter Energy*, 542 B.R. at 878 (collecting cases) ("Courts thus routinely analyze motions for relief under sections 1113 and 1114 together, and the Court will do so here.")

105 *Walter Energy, Inc.*, 542 B.R. at 895; *In re Nw. Airlines Corp.*, 346 B.R. 307, 328 (Bankr. S.D.N.Y. 2006).

106 *Patriot Coal Corp.*, 493 B.R. at 112; *see also In re Bowen Enters., Inc.*, 196 B.R. 734, 741 (Bankr. W.D. Pa. 1996) ("Debtor bears the ultimate burden of persuasion, by a preponderance of the evidence, as to all of these requirements. This does not, however, mean that the burden of production is upon debtor in every instance. The burden of production lies upon the union as to requirements (5), (7), and (8).").

107 *In re Chicago Constr. Specialties, Inc.*, 510 B.R. 205, 217-18 (Bankr. N.D. Ill. 2014); *see also In re Family Snacks, Inc.*, 257 B.R. 884, 893 (B.A.P. 8th Cir. 2001) ("[E]ach court that has addressed the meaning of the phrase 'reorganization of the debtor,' as found in § 1113(b)(1)(A), has held or assumed that § 1113 applies in a case where the debtor will not be engaged in business because it is selling its assets."); *Walter Energy*, 542 B.R. at 880, *aff'd*, 579 B.R. 603, *aff'd*, 2018 WL 6803736 (each court holding that sections 1113 and 1114 both apply in a case where, as here, a debtor conducted a section 363 sale of its coal business).

80. Here, the Debtors satisfy all of the requirements for relief under sections 1113 and 1114. No affected party has good cause to reject the Proposal, and the alternative to the relief sought in this Motion is liquidation. Accordingly, the Court should grant the Debtors' Motion and provide the Debtors authority to reject the Beulah and Kemmerer CBAs and the Retiree Benefits.

B. The Debtors' Proposal Is Necessary to the Debtors' Reorganization Because It Is the Only Way to Permit the Going-Concern Sale of the Debtors' Assets.

81. A debtor's proposed modifications to its collective bargaining agreements or retiree benefits must be "necessary to permit the reorganization of the debtor." 11 U.S.C. §§ 1113(b)(1)(A), 1114(g)(3). This element is "[t]he most fundamental requirement for rejection of a collective bargaining agreement,"[108] and is clearly satisfied here.

82. Under the majority approach,[109] the necessity requirement "places on the debtor the burden of proving that its proposal is made in good faith, and that it contains *necessary, but not absolutely minimal*, changes that will enable the debtor to complete the reorganization process successfully."[110] In sale cases like this one, courts find debtors' sections 1113 and 1114 proposals to be "necessary" where the modifications are necessary to facilitate going-concern sales.[111]

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108 *Nw. Airlines*, 346 B.R. at 321.

109 Some courts have disagreed on the meaning of "necessary." *See In re PJ Rosaly Enters. Inc.*, 578 B.R. 682, 692-93 (Bankr. D.P.R. 2017) (discussing the "circuit split" between the "essential" view of the Third Circuit and the "necessary, but not absolutely minimal" view followed by the Second Circuit). Courts adopting the majority approach conclude "that the Second Circuit's test for necessity is more consistent with the history and purpose of § 1113 and with the realities of a reorganization under Chapter 11 than the Third Circuit's 'bare minimum' test." *In re Appletree Mkts., Inc.*, 155 B.R. at 441; *see also In re PJ Rosaly*, 578 B.R. at 693 (concluding that the Second Circuit's "interpretation reflects the context in which Section 1113 operates and the goals of Chapter 11").

110 *Truck Drivers Local 807, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am. v. Carey Transp. Inc.*, 816 F.2d 82, 90 (2d Cir. 1987) (emphasis added).

111 *See, e.g.*, *Walter Energy*, 542 B.R. at 888 ("Sections 1113 and 1114 require only that the Debtors demonstrate that the Final Proposal is 'necessary to permit the reorganization of the Debtors,' which in this context means those modifications necessary to consummate the going-concern sale of their Alabama Coal Operations."); *In re Karykeion Inc.*, 435 B.R. 663, 678-79 (Bankr. C.D. Cal. 2010) (finding modifications to a CBA necessary where a sale was needed to avoid a shut-down and liquidation, and consummating the sale required relief from CBA provisions); *In re Nat'l Forge Co.*, 289 B.R. 803, 810-11 (Bankr. W.D. Pa. 2003) (finding modifications to a CBA necessary in a liquidating chapter 11 where a sale had strict timelines imposed by the lender); *see also In re Maxwell Newspapers Inc.*, 981 F.2d 85, 90-91 (2d Cir. 1992) ("necessary" requirement satisfied where the

83. In determining necessity, a debtor's proposal "must be viewed as a whole, and not by its specific elements."[112] Thus, a request for relief under sections 1113 or 1114 cannot be defeated by challenging the "necessity" of select parts of the proposal if the proposal, taken as a whole, is necessary for the debtors to reorganize.[113]

84. The circumstances here echo those in *Walter*. In *Walter*, the bankruptcy court permitted the rejection of the debtor's CBAs and termination of Retiree Benefits because:

> [T]he Debtors' Alabama Coal Operations cannot be sold subject to the collective bargaining agreements and Retiree Benefits. The Debtors have engaged in and continue to engage in active efforts to sell their assets subject to the obligations, but no such offers have been received and none are anticipated. The amount of the employee legacy costs, including the costs of medical benefits for hourly rate retirees and for Coal Act beneficiaries and the liability arising from the Debtors' withdrawal from the 1974 Pension Plan, are substantial. . . . The Court finds credible that no potential buyers have an interest in assuming such obligations, let alone assuming such obligations *and* investing such new capital. The Debtors have, accordingly, carried their burden of showing that, absent the rejection of the UMWA CBA and the termination of the Retiree Benefits, the sale(s) will not close and conversion of these cases to Chapter 7 and a piecemeal liquidation would ensue. Therefore, the relief sought is necessary to permit the Debtors' reorganization within the meaning of sections 1113 and 1114.[114]

The same facts are present here.

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modifications were required to consummate a going-concern sale).

[112] *In re Horsehead Indus.*, 300 B.R. at 584; *see also Alpha Nat. Res.*, 552 B.R. at 334 ("A debtor is not required to prove that every part of its proposal is the necessity…. The Court will not scrutinize whether each individual modification is necessary."); *Nw. Airlines*, 346 B.R. at 321 ("[A] debtor need only make a showing as to the overall necessity of the proposal, rather than prove that each element of the proposal is necessary to reorganization"); *Appletree Mkts.*, 155 B.R. at 441 (court must focus on "the total impact of the changes [o]n the debtor's ability to reorganize, not on whether any single proposed change will achieve that result").

[113] *In re Royal Composing Room, Inc*., 848 F.2d 345, 348-49 (2d Cir. 1998) (concluding that if a debtor were required to justify each element of its proposal, "no proposal could ever truly be 'necessary,' since any single vital element of a proposal can hardly be 'necessary' if it can be replaced by some alternative not included in the package which would achieve the same dollar savings for the debtor"); *Patriot Coal Corp.*, 493 B.R. at 125 ("If a debtor were required to prove the necessity of each element of its proposal, a union could defeat the motion by singling out any element of the proposal as unnecessary where an alternative could be reasonably substituted.").

[114] *Walter Energy*, 542 B.R. at 889-90; *see also Horizon Nat. Res.*, 316 B.R. at 282 (rejection of CBA and retiree medical benefits approved; "the debtors' assets cannot be sold subject to the collective bargaining agreements and retiree benefits, or cannot be sold subject to those obligations for a price sufficient [to] pay administrative expenses or otherwise consummate the proposed Chapter 11 plans").

85. To be clear, the Debtors—and all of their creditors—wish that a buyer could be found who was willing to accept the UMWA CBAs, continue paying the Retiree Benefits, or both. But after testing the market for months, no such buyer could be found. The market has spoken: it has told all stakeholders that no potential buyer for the Debtors' assets is willing to assume the Debtors' obligations under the UMWA CBAs or to incur the cost of any of the Retiree Benefits.[115]

86. Thus, under the standards articulated by many prior courts, the relief requested here is clearly "necessary" within the meaning of sections 1113 and 1114.[116] The WLB Debtors' Sale Transaction and WMLP Debtors' sale process are currently the only viable paths forward for a sale of the Debtors' operating assets as going concerns, and are necessary steps towards exiting chapter 11. All transactions proposed by capable bidders are expressly conditioned on consensual modifications or, alternatively, the rejection of the UMWA CBAs and termination of the Retiree Benefits. The only possible alternative for the Debtors is a piecemeal liquidation, which would harm all of the Debtors' stakeholders, including their employees.

87. The Debtors, therefore, must obtain section 1113/1114 relief to have authority to reject the UMWA CBAs and terminate the Retiree Benefits. The only consideration is "whether [the buyer's] purchase of the debtor's assets is necessary and whether they are likely to rescind their offer if their terms are not met."[117]

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115 *See, e.g.*, *Karykeion*, 435 B.R. at 679 (refusing to "evaluate the wisdom" of the third party's insistence on rejection of the CBAs, noting that the court's role was to evaluate "only whether [the third party's] purchase of the debtor's assets is necessary and whether they are likely to rescind their offer if their terms are not met"); *Nat'l Forge Co.*, 289 B.R. at 808 ("Debtor and its advisors were compelled to seek rejection of the CBA prior to confirmation of the sale . . . .").

116 *See, e.g.*, *In re Ionosphere*, 134 B.R. at 525 (concluding that the requirement that a proposal reflect modifications to collective bargaining agreements or retiree benefits that are "necessary to permit the reorganization" must be interpreted to mean "necessary to accommodate confirmation of a Chapter 11 plan"); *see also Walter Energy*, 542 B.R. at 880 ("Permitting a debtor to avail itself of section 1113 and 1114 relief to consummate a going-concern sale where the debtor cannot confirm a Chapter 11 comports with Congressional intent that sections 1113 and 1114 serve a rehabilitative purpose.").

117 *See Karykeion*, 435 B.R. at 679 (refusing to "evaluate the wisdom" of purchaser's insistence on rejection of the CBAs); *Walter Energy*, 542 B.R. at 891 ("The 'wisdom' of the Proposed Buyer's position regarding which of the

88. Here, there is no reason to believe that the Stalking Horse is willing to acquire the WLB Debtors' assets if it has to assume the hundreds of millions of dollars in Retiree Benefit liabilities and take assignment of the UMWA CBAs. The Stalking Horse has been adamant that it is unwilling to do so, and the alternative to a free-and-clear sale is likely a liquidation that would surely be worse for all constituents, including the UMWA-represented active employees and the retirees. Similarly, there is no reason to believe that any bidder for the WMLP Debtors' assets is willing to proceed with a transaction that exposes it to any Retiree Benefits or the Kemmerer CBA.

89. Put simply, the WLB Debtors' proposal is necessary to effectuate their reorganization; the Debtors cannot reorganize without selling their assets, must sell their assets pursuant to a chapter 11 plan or section 363 of the Bankruptcy Code, and no buyer is willing to purchase the assets at all if they are subject to the UMWA CBAs, unfrozen pension plans or the Retiree Benefit obligations.

C. The Debtors' Proposal Is Fair and Equitable.

90. Sections 1113(b)(1)(A) and 1114(g)(3) of the Bankruptcy Code require that a debtor's proposal treat affected parties "fairly and equitably." The purpose of this requirement is to "spread the burden of saving the company to every constituency while ensuring that all sacrifice to a similar degree."[118] Nevertheless, "equity means fairness under the circumstances" and does not require every constituency to get the same treatment.[119] "[D]etermining what constitutes fair

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Debtors' liabilities it is willing to assume or pay is irrelevant. The only consideration is whether the Debtors' proposed elimination of the Successorship Provisions or rejection of the CBAs is necessary to permit the going concern sale.…"); *Nat'l Forge* , 289 B.R. at 808 ("Because of the [active] successor language, Debtor and its advisors were compelled to seek rejection of the CBA prior to confirmation of the sale to eliminate a potential claim by the Union under the successor clause.").

[118] *Patriot Coal Corp.*, 493 B.R. at 130 (quoting *Nw. Airlines*, 346 B.R. at 325).

[119] *In re Ind. Grocery Co., Inc.*, 138 B.R. 40, 49 (Bankr. S.D. Ind. 1990); *In re Amherst Sparkle Mkt., Inc.*, 75 B.R. 847, 851 (Bankr. N.D. Ohio 1987) ("Simply because the proposed modifications do not provide for identical treatment with respect to all affected parties, this does not necessarily result in unfair or inequitable treatment under § 1113(b)(1)(A)."); *Matter of Walway Co.,* 69 B.R. 967, 974 (Bankr. E.D. Mich. 1987) ("[A] comparative

and equitable treatment [requires flexibility] because differing sacrifices of parties in interest are not always easy to compare."[120]

91. Here, the Proposal is fair and equitable. The UMWA CBAs are far more costly to the Debtors than the IUOE's CBAs.[121] In fact, the major changes to the UMWA CBAs demanded by the Debtors' Proposal—freezing of the Debtors' single employer, defined benefit pension plans and elimination of retiree medical, and replacement of both with sustainable employer contributions to employees' 401(k) accounts—were largely already part of most IUOE CBAs.[122] Yet the UMWA refused to make those same changes to either the Beulah CBA or the Kemmerer CBA—or even make any formal counterproposals to the Proposal.

92. The WLB Debtors' salaried and management ("SAM") employees cannot be reasonably asked to give more, either.[123] The WLB Debtors have experienced massive attrition in their SAM population over the last year, reflecting the uncertainties of the WLB Debtors' businesses and the existing modesty of the compensation opportunities with the WLB Debtors; further cuts would make the situation far worse.[124] None of the SAM employees receive retiree medical benefits or a defined benefit pension plan.[125] And the WLB Debtors' SAM employees

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dollar-for-dollar concession" is not mandated by the fairness-and-equity requirement).

120 *Patriot Coal Corp.*, 493 B.R. at 131; *see also Nw. Airlines,* 346 B.R. at 326 ("Because it is often difficult to compare the differing sacrifices of parties in interest, courts apply a flexible approach in determining what constitutes 'fair and equitable treatment.'"); *Walter Energy*, 542 B.R. at 892 ("[T]he 'fair and equitable' requirement does not mandate perfectly proportionate burdens on both union and non-union employees."); *In re Tex. Sheet Metals*, 90 B.R. at 269 ("The debtor is not required to prove, in all instances, that managers and non-union employees will have their salaries and benefits cut to the same degree that union workers' benefits are to be reduced but can point to other factors to prove that its proposal is fair and equitable.").

121 Ex. 6, Martinez Decl. ¶¶ 21-22.

122 Ex. 5, Goodheart Decl., Appendix B - Summary of Proposal re Kemmerer.

123 The WMLP Debtors do not have any employees.

124 Ex. 6, Martinez Decl. ¶¶ 19-20.

125 *Id.* ¶¶ 5, 8.

have already experienced cost-cutting in recent years—employees already must cover 20% of medical expenses; 401(k) matching opportunities have been reduced; and vacation accruals have been reduced as well.[126] At the same time, the WLB Debtors' SAM employees all have been forced to do more with less, given that the majority of the employees who have resigned have not been replaced, and the WLB Debtors' use of (non-restructuring) consultants in lieu of employees has been reduced materially, meaning that those remaining must do the same amount of work with far less help.

93. The Debtors' other stakeholders are also suffering substantially as a result of these chapter 11 cases. The WLB Debtors' proposed plan of reorganization currently offers zero recovery to unsecured creditors because, in the WLB Debtors' view, there is no unencumbered value for unsecured creditors.[127] Based on the marketing process and the current Stalking Horse Bid, the WLB Debtors' secured creditors will recover significantly less than what they are owed, but they nonetheless have agreed to sacrifice significantly to keep the Debtors' businesses in operation by taking on various costs and burdens, including by agreeing to:

- vote for a plan that will impair their bonds and bank debt substantially;
- pay for certain "Funded Liabilities" (as defined in the Plan) that must be paid in order for the WLB Debtors to emerge from chapter 11 (secured and administrative claims);
- purchase all of the WLB Debtors' Non-Core Assets (which they do not want), to the extent there is no other buyer, *and* to fund certain claims associated with the Non-Core Assets to the extent they purchase the associated assets (including legacy asset reclamation obligations (ARO) relating to mines that are not even producing at this time);
- assume two defined benefit pension plans covered by the PBGC (if they are frozen);

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126 *Id.* ¶ 7.

127 *See Disclosure Statement for Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* [Docket No. 789] at 3 ("It is currently expected that each Holder of a General Unsecured Claim is likely to receive no distribution under the Plan because the WLB Debtors do not anticipate there will be any unencumbered assets available to fund the General Unsecured Claims Amount.").

- pay tens of millions of dollars in critical trade payments;
- support the WLB Debtors' efforts to secure consensual resolution of collective bargaining agreements and retiree medical issues with the IUOE; and
- offer $6 million to fund a retiree medical settlement for Heritage, Kemmerer and Beulah retirees.[128]

94. Similarly, the WMLP Debtors' secured term lenders have claims in excess of $326 million but, based on the existing bids for the WMLP Debtors' assets, these secured lenders stand to recover significantly less than what they are owed. Nevertheless, these lenders have continued to support the WMLP's restructuring and allow the WMLP Debtors to use millions of dollars of cash collateral to fund the WMLP Debtors' chapter 11 cases and operations, including payments to employees, vendors, and other creditors. The WMLP Debtors' secured lenders also submitted a bid to purchase the Kemmerer assets which, among other things, if consummated, will prevent the liquidation of Kemmerer, keep the mine in operation, and prevent the loss of hundreds of jobs.

95. The Debtors regret their need to seek relief pursuant to sections 1113 and 1114. But, especially in light of the value that will be preserved if such relief is granted, and the lack of any other viable option other than liquidation, the proposed relief is the most fair and equitable path forward for the Debtors and all of their stakeholders.

D. The Debtors' Proposal Is Based Upon the Most Complete and Reliable Information Available.

96. A debtor's proposal must be "based on the most complete and reliable information available at the time of such proposal." 11 U.S.C. §§ 1113(b)(1)(A), 1114(f)(1)(A).[129] This requirement (like the others) is applied contextually.[130]

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[128] Ex. 3, Puntus Decl. ¶ 11.

[129] *See also In re Am. Provision Co.*, 44 B.R. at 909 (proposals to reject CBAs and modify retiree benefits must be "based on the most complete and reliable information available at the time of the proposal").

[130] *See, e.g., Walter Energy*, 542 B.R. at 879 ("[W]hen a Chapter 11 debtor is being sold or is liquidating rather than reorganizing, courts apply the requirements for section 1113(c) relief 'contextually, rather than strictly'…."); *In*

97. Here, the Proposal is based on the most complete and reliable information available, as of the time the Debtors made their Proposal and filed this Motion. Indeed, the Debtors deliberately negotiated two extensions of the section 1113/1114 deadline in the RSA and their financing orders[131] to make sure that they would have the benefit of the full parallel marketing processes to determine if there was ***anyone*** out there willing to acquire the Debtors' assets tied to the UMWA CBAs or the Retiree Benefits prior to filing this Motion. Unfortunately, the Debtors have no reason to believe that such an entity exists.[132]

98. As described in detail above, the Debtors are unable to exist as a going-concern and must sell their assets. The Proposal reflects the reality of the sale processes, and all of the information available indicates that no one will buy the Debtors' assets if they are burdened with the Retiree Benefit liabilities and the UMWA CBAs.

E. The Debtors Have Provided the Information Necessary to Evaluate Their Proposal.

99. Sections 1113 and 1114 require a debtor to provide its unions and employee representatives with "such relevant information as is necessary to evaluate" their proposals. 11 U.S.C. §§ 1113(b)(1)(B), 1114(f)(1)(B). This does not require a debtor to turn over every piece of paper to a union considering a proposal, or to perform analysis that does not exist.[133] Rather,

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re Chicago Constr. Specialties, 510 B.R. at 217 (noting that the factors for section 1113 relief must be applied contextually, particularly in a liquidating chapter 11 case where a debtor's assets are being sold); *Patriot Coal*, 493 B.R. at 114 ("A debtor's proposal must be 'firmly grounded in the historical reality of operational economics, an unvarnished evaluation of [the debtor's] current straits, and a thorough analysis of all of the incidents of income and expense that would bear on its ability to maintain a going concern in the future.'").

131 *See* ECF Nos. 521, 896.

132 Ex. 3, Puntus Decl. § 29; Ex. 7, Cowan Decl. ¶ 16.

133 *E.g., Patriot Coal*, 493 B.R. at 115 ("A debtor's failure to perform analyses for the union that otherwise do not exist and that the debtor has not performed for itself cannot reasonably be a basis for a court to conclude that the debtor did not provide the union with necessary information to evaluate the proposal."); *see also In re AMR Corp.*, 477 B.R. 384, 439-43 (Bankr. S.D.N.Y. 2012) (airline debtor supplied necessary information by giving high priority to union requests, facilitating sharing of confidential information through a web-based data room, and sharing its valuations of proposed work rule changes, even though it did not perform new analyses at union's

like the other factors listed under sections 1113 and 1114, this is a reasonableness analysis, ensuring that the union is provided a reasonable quantum of information as necessary to evaluate the debtor's proposal.

100. Here, as described above, the Debtors provided substantial information to the UMWA. And "[o]nce the debtor shows what information it provided the Union, '[i]t is then incumbent upon the Union to produce evidence that the information provided was not the relevant information which was necessary for it to evaluate the proposal.'"[134]

101. The UMWA cannot make that showing here. In situations where a debtor is selling assets, the "relevant information" necessary for the union to evaluate a section 1113/1114 proposal is targeted. As in *Walter*,

> By [the time the Debtor pivoted to a 363 sale process], the 'relevant information' was simple and apparent for all to see: the Debtors could not survive absent a sale in the near term, the Proposed Buyer had emerged as the only viable bidder that would purchase the Alabama Coal Operations as a going-concern, the sale of the Alabama Coal Operations as a going-concern provides the best chance for future employment of the Debtors' employees, and the Stalking Horse APA requires elimination of the Successorship Provisions or rejection of the UMWA CBA. Moreover, upon closing of the sale(s) (or outright liquidation), the Debtors will have no money to pay Retiree Benefits.[135]

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request); *Appletree Mkts.*, 155 B.R. at 438 (debtor, then Houston's third largest supermarket chain, supplied necessary information when it provided union access to its financial books and current financial statements); *In re Valley Steel Prods. Co. Inc.*, 142 B.R. 337, 338 (Bankr. E.D. Mo. 1992) (debtors, a steel manufacturer and freight service with 240 employees, supplied necessary information when they disclosed four years of operating statements, three years of consolidated balance sheets, and one monthly bankruptcy operating report); *In re Alpha Nat. Res., Inc.*, 552 B.R. 314, 332 (Bankr. E.D. Va. 2016) (Debtors provided sufficient information where there were over 22,000 pages of information in data room, Debtors timely complied with additional data request, uploaded a dynamic business model, and continued to develop their business plans in coordination with their restructuring advisors and in connection with changing market conditions.)

134 *Appletree Markets,* 155 B.R. at 438 (quoting *In re Am. Provision Co.*, 44 B.R. at 909-10); *see also Patriot Coal Corp.*, 493 B.R. at 115 (rejecting Union's argument the Debtors had not provided enough information to evaluate proposals, where, *inter alia*, Union's request for fully dynamic projection model was "completely unrealistic and well beyond the requirements of the statute").

135 *Walter Energy*, 542 B.R. at 887; *see also id*. at 888 ("The Debtors provided the Objectors with clear and comprehensive financial, business and operational information detailing the Debtors' cash needs and the

102. Here, the Debtors have supplied the UMWA with "such relevant information as is necessary to evaluate" the Proposal as required under sections 1113 and 1114. *See* 11 U.S.C. §§ 1113(b)(1)(A), 1114(f)(1)(B). The UMWA sent the Debtors a request for information on November 6, 2018, seeking voluminous amounts of data.[136] The UMWA agreed to an appropriate protective order on Sunday, November 18, and the next day the Debtors granted the UMWA and its counsel access to a dataroom which contained extensive information specifically provided in response to twelve of the UMWA's requests as well as 1,600 additional documents, such as:

- Documents relating to the Debtors' organizational and corporate structure;
- Material agreements, including the CBAs and various acquisition related documents and surety indemnity agreements;
- Financial and operational data, including confidential information memoranda related to the sale process, balance sheets, production reports, and life of mine models;
- Human resources-related information, such as information about benefits and headcount; and
- Documents regarding the status of cost cutting initiatives and the sale processes.[137]

103. Over the subsequent month, the Debtors worked hard and in good faith to respond to all of the UMWA's periodic requests.[138] Many of these documents came from the Debtors' own files, but the Debtors also worked with their benefit providers to locate and produce numerous additional materials, including detailed spreadsheets, which the Debtors provided to the UMWA in response to the UMWA's specific requests.[139] These materials provided to the UMWA include:

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likelihood that the Debtors would run out of money in January 2016 unless the 363 Sale closed before then. This information was far more detailed and substantive than just a 'snap-shot of current finances.' In these circumstances, that information suffices to demonstrate the necessity of the section 1113 and 1114 relief.") (citations omitted).

136 Ex. 5, Goodheart Decl. ¶ 21.

137 *Id.*

138 *Id.* ¶ 22.

139 *Id.*

- Operational data, such as shift schedules;
- Union employee names and contact information;
- Information regarding insurance rates;
- Policies and procedures related to mine workers, including benefit guides;
- Summaries of outstanding grievances and arbitrations;
- Audit reports regarding medical costs;
- Extensive healthcare utilization data relating to, for example, hospital visits, prescription drug and other benefits; and
- Details regarding pension projections and termination liability.[140]

104. The Debtors' responses to the UMWA's information requests have been fulsome. In fact, during the Debtors' discussions with the UMWA on December 14, 2018, the UMWA's bargaining representative confirmed that the UMWA had no further information requests.[141] And the UMWA has not made any additional information requests.[142] This satisfies the Debtors' information-sharing burdens under sections 1113 and 1114.

F. The Debtors Have Engaged in Good Faith Negotiations Seeking Mutually Satisfactory Modifications.

105. Sections 1113 and 1114 also require that a debtor confer with a union "in good faith in attempting to reach mutually satisfactory modifications" to the applicable obligations. *See* 11 U.S.C. §§ 1113(b)(2) & 1114(f)(2). But "once the debtor has shown that it has met with the Union representatives, it is incumbent upon the Union to produce evidence that the debtor did not confer in good faith."[143] In fact, a failure to reach agreement may be "the result of the difficultness of the

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140 *Id.*

141 *Id.* ¶ 23.

142 *Id.*

143 *In re Carey Transp., Inc.*, 50 B.R. 203, 211 (Bankr. S.D.N.Y. 1985) (quoting *In re Am. Provision Co.*, 44 B.R. at 910).

task, rather than the lack of 'good faith' of either party."[144] Here, the Debtors clearly negotiated in good faith in an effort to reach a mutually satisfactory outcome.[145]

106. As described above, the Debtors attempted to negotiate with the UMWA pre-petition, but the UMWA refused to negotiate at all.[146] Post-petition, the Debtors met with the UMWA repeatedly to bargain and negotiate regarding the modifications that the Debtors are required to seek pursuant to sections 1113 and 1114.[147] The Debtors never refused a request when the UMWA proposed a meeting.[148] The Debtors' continued willingness to meet with the UMWA even after filing this Motion is itself compelling evidence of the Debtors' good faith—particularly when the UMWA has ***never made a written counterproposal***.[149]

G. The UMWA Has No Good Cause to Reject the Proposal.

107. Sections 1113 and 1114 also require a debtor to demonstrate that its union has "refused to accept [its] proposal without good cause." 11 U.S.C. §§ 1113(c)(2), 1114(g)(2). Once a debtor establishes that its proposal is necessary, fair, and in good faith, an objecting union must produce sufficient evidence to justify their refusal to accept the proposal.[150]

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144 *Id.* (quoting *In re Salt Creek Freightways*, 47 B.R. 835, 840 (Bankr. D. Wyo. 1985)). It is settled law that entering into a stalking horse agreement requiring CBA rejection (absent an agreement) is not bad faith. *See Alpha Nat. Res.*, 552 B.R. at 335–36 (rejecting Union's argument that entry into stalking horse agreement requiring CBA rejection was a sign of bad faith; "no party has put forth a viable bid to assume the Debtors' obligations under their collective bargaining agreements," and the Debtors had no power to force a bidder to accept them).

145 The WLB Debtors reached two separate agreements with their other union partners, the IUOE. The first agreement was rejected by membership of both underground and surface miners; the second was ratified by the underground miners, rejected by the surface miners (with whom the Debtors continue to negotiate). This demonstrates the WLB Debtors' seriousness in negotiating in good faith to secure agreements with their unions.

146 *See infra* p. 22 & nn. 58-61.

147 Ex. 5, Goodheart Decl. ¶ 18.

148 *Id.*

149 *See, e.g.*, *Walter Energy*, 542 B.R. at 892 ("Indeed, the Debtors' willingness to meet frequently with the UMWA is itself compelling evidence of the Debtors' good faith."); *Matter of Sol-Sieff Produce Co.*, 82 B.R. 787, 795 (Bankr. W.D. Pa. 1988) (holding that a debtor negotiated in good faith where the "Debtor ha[d] at all times been ready, willing, and able to negotiate" with its union).

150 *See, e.g.*, *In re Nw. Airlines*, 346 B.R. at 328; *Walter Energy*, 542 B.R. at 895; *Alpha Nat. Res.*, 552 B.R. at 336.

108. The statutory structure shows that if the Debtors satisfy the procedural prerequisites for a section 1113/1114 motion, and the Debtors' proposal is made in good faith, there is almost never good cause to reject it. As one court described, "almost invariably, 'if a debtor-in-possession goes through the procedural prerequisites for its motion, and if the substance of the proposal ultimately passes muster . . . its union(s) will not have good cause to have rejected the proposal.'"[151] In other words, where (as here) a proposal is necessary for a debtor's viability and the other statutory requirements are met, no good cause exists to reject the proposal.[152]

109. Here, the UMWA has not specified exactly why it rejected the Proposal. Indeed, the UMWA never made a counterproposal, nor did it ever suggest a path that the Debtors had the option to pursue that would be acceptable to the UMWA.[153] While all parties would prefer it if the UMWA CBAs could remain in place or if the WLB Debtors were able to continue paying the Retiree Benefits, "good cause" does not include demands that are not economically feasible or alternatives that would not permit the debtor to reorganize successfully.[154]

110. The UMWA's refusal to accept the Debtors' Proposal was without "good cause."

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151 *Ass'n of Flight Attendants-CWA, AFL-CIO v. Mesaba Aviation, Inc.*, 350 B.R. 435, 461 (D. Minn. 2006) (quoting *In re Mesaba Aviation, Inc.*, 341 B.R. 693, 755 (Bankr. D. Minn. 2006)).

152 *See Mesaba Aviation Inc.*, 350 B.R. at 462 ("While the low wages imposed by the Proposals understandably motivated the Unions to reject the Proposal, they do not constitute good cause under the Bankruptcy Code."); *see also In re Valley Steel Prods.*, 142 B.R. at 342 ("It is clear that the Proposals would have a negative impact on the Teamster Drivers' incomes. It is equally clear that if the Debtors do not receive these concessions they will be forced to liquidate and the Teamsters will be unemployed.").

153 Ex. 5, Goodheart Decl., ¶ 17.

154 *See Nw. Airlines Corp.*, 346 B.R. at 328; *see also Karykeion*, 435 B.R. at 684 (holding that union failed to show good cause for rejecting the debtor's proposals where the union made no counterproposal concerning the proposed elimination of the successorship provisions in the CBAs and continued to make demands that the debtor could not meet); *Maxwell Newspapers*, 981 F.2d at 90 (a lack of good cause may be demonstrated by union's adherence to demands that are impossible for the debtor to meet and failure to offer alternatives that take into account the debtors' reorganization plan); *Walter Energy, Inc.*, 542 B.R. at 895–96 ("'Good cause' does not include demands that are not economically feasible or alternatives that would not permit the debtor to reorganize successfully."); *In re Salt Creek Freightways*, 47 B.R. at 840 ("[T]he court must view the Union's rejection utilizing an objective standard which narrowly construes the phrase 'without good cause' in light of the main purpose of Chapter 11, namely reorganization of financially distressed businesses.").

The Debtors' marketing and sale processes have confirmed that no buyer is willing to pay the Retiree Benefits or take the UMWA CBAs in their current form.[155] The sales pursuant to the RSA (for the WLB Debtors' assets) and the Cash Collateral Order (with respect to the WMLP Debtors' assets) cannot happen absent the relief sought in this Motion, and the only alternative is a piecemeal liquidation in which everyone will suffer—including the WLB Debtors' employees and retirees. Insisting that a buyer agree to assume the UMWA CBAs or pay the Retiree Benefits places a demand on the Debtors that they cannot satisfy.[156]

H. The Balance of the Equities Favors Granting the Relief Requested.

111. The balance of the equities favors rejection of the UMWA CBAs and termination of the Retiree Benefits, as required for approval of a motion under sections 1113 and 1114. *See* 11 U.S.C. §§ 1113(c)(3), 1114(g)(3).

112. In assessing the equities, bankruptcy courts "must focus on the ultimate goal of chapter 11 ... [as the] Bankruptcy Code does not authorize freewheeling consideration of every conceivable equity, but rather only how the equities relate to the success of the reorganization."[157] The right question is "the effect the rejection of the agreement will have on the debtor's prospects for reorganization."[158]

113. This is a fact-specific inquiry, and courts consider six factors:

- the likelihood and consequences of liquidation if rejection is not permitted;
- the likely reduction in the value of creditors' claims if the bargaining agreement remains in force;

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155 Ex. 3, Puntus Decl., ¶¶ 28-30; Ex. 7, Cowan Decl., ¶¶ 15-16.

156 *Walter Energy*, 542 B.R. at 896-97 (not "good cause" for union to "reject a proposal by demanding conduct or action" that the debtor does not control).

157 *Nw. Airlines Corp.*, 346 B.R. at 329 (quoting *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 527 (1984)).

158 *Id.*

- the likelihood and consequences of a strike if the CBA is voided;
- the possibility and likely effect of any employee claims for breach of contract if rejection is approved;
- how employees' wages and benefits compare to others in the industry; and
- the good or bad faith of the parties in dealing with the debtor's financial dilemma.[159]

Here, all of the relevant factors favor granting the requested relief.

114. As described above, liquidation is near certain without the relief from the UMWA CBAs and Retiree Benefits sought in this Motion. The recoveries of all parties in these chapter 11 cases, including administrative creditors and the Debtors' secured lenders, are at significant risk in a liquidation—and unsecured creditors (such as the PBGC, the Debtors' trade vendors, and others) would be significantly worse off in liquidation. Employees and retirees would also be worse off in a liquidation. And while the Debtors would prefer if the UMWA employees at Beulah and Kemmerer did not strike (in the event this Motion were granted and the UMWA CBAs were rejected), the reality is that: (a) the Stalking Horse would prefer not to acquire Beulah at all; (b) no bidder for the WMLP Debtors' assets is willing to take on the Kemmerer CBA without modification; and (c) the Kemmerer CBA is with an entity (WLB) that does not actually own the Kemmerer mine and must reject the Kemmerer CBA in all circumstances.

115. In short, although the Debtors appreciate that their Proposal may be difficult for the UMWA's active employees and affected retirees to accept, the balance of the equities clearly

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[159] *See, e.g.*, *Tex. Sheet Metals*, 90 B.R. at 272 (citing *Carey Transp. Inc.*, 816 F.2d at 93)*; see also Alpha Nat. Res., Inc.*, 552 B.R. at 337 ("The threat of liquidation and loss of every union and non-union job permeates the Court's concern in this case, and overrides the other equitable considerations."); *Walter Energy, Inc.*, 542 B.R. at 886 (balance of the equities clearly satisfied where "the Debtors' liquidation is almost certain if this Court does not approve the rejection of the UMWA CBA"); *Patriot Coal*, 493 B.R. at 137 ("likelihood and consequences of liquidation if the CBA remains intact overrides the rest of these balancing factors"; finding that if the Debtors did not receive relief from Retiree Benefits, liquidation was inevitable, which was "by all accounts… the worst scenario").

favors giving the Debtors authority to reject the UMWA CBAs, modify the Retiree Benefits, and implement the Proposal if the parties cannot reach agreement on acceptable settlement terms.

VI. NOTICE

116. 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 Committee; (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 group of certain lenders under the WMLP Debtors' term loan facility due 2018; (i) the administrative agent under the WLB Debtors' debtor-in-possession financing facility; (j) the lenders under the WLB Debtors' 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) the UMWA; (s) the Coal Act Funds; (t) the Coal Act Retiree Representatives; and (u) 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.

VII. CONCLUSION

117. For the reasons stated herein, the Debtors respectfully request that the Court grant the requested relief, and enter the Proposed Order attached as Exhibit 1 hereto.[160]

Houston, Texas
January 16, 2019

/s/ Patricia B. Tomasco

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[160] A proposed scheduling order setting the hearing date and response deadline with respect to the Motion is attached as Exhibit 17.

Certificate of Service

I certify that on January 16, 2019, 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