

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:

Westmoreland Coal Company, et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

**SECOND STIPULATION AND AGREED ORDER (A) EXTENDING  
CHALLENGE PERIOD TERMINATION DATE IN FINAL DIP  
ORDER AND (B) RESOLVING POSSIBLE CONFIRMATION  
OBJECTIONS PURSUANT TO SETTLEMENT TERM SHEET**

This Stipulation and Agreed Order (the “**Stipulation**”) is entered into this 22nd day of January, 2019, between the Official Committee of Unsecured Creditors (the “**Committee**”) in the above-captioned cases of Westmoreland Coal Company and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”) and the Required Lenders (as defined in the DIP Credit Agreement and the Final DIP Order), who, by and through their undersigned counsel, hereby stipulate and agree as follows:

**WHEREAS**, on November 15, 2018, the Court entered the *Final Order (I) Authorizing Westmoreland Coal Company and Certain of its Affiliates to Obtain Postpetition Secured Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying*

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<sup>1</sup> 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](http://www.donlinrecano.com/westmoreland). Westmoreland Coal Company’s service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

*the Automatic Stay, and (VI) Granting Related Relief* [Docket No. 520] (the “**Final DIP Order**”);<sup>2</sup>

**WHEREAS**, pursuant to paragraph 33 of the Final DIP Order, parties with requisite standing were required to timely commence a Challenge by the later of (a) sixty (60) days after entry of the Interim Order and (b) January 7, 2019 for the Committee (the “**Challenge Period Termination Date**”);

**WHEREAS**, on January 6, 2019, the Committee delivered a letter to the Debtors describing the potential claims and causes of action identified in connection with the Committee’s investigation that it in good faith believed could provide a basis for a Challenge (the “**Letter Claims**”);

**WHEREAS**, on January 9, 2019, the Court entered the *Stipulation and Agreed Order Extending Challenge Period Deadline in Cash Collateral Order* [Docket No. 995] extending the Challenge Period Termination Date, solely with respect to the Letter Claims, through and including January 14, 2019;

**WHEREAS**, the Committee and the Required Lenders agreed to further extend the Challenge Period Termination Date, solely with respect to the Letter Claims, through and including January 22, 2019 [Docket No. 1108];

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, AND UPON APPROVAL BY THE COURT OF THIS STIPULATION, IT IS SO ORDERED AS FOLLOWS:**

1. The foregoing recitals are hereby incorporated by reference into this Stipulation with the same force and effect as if fully set forth hereafter.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Final DIP Order.

2. The Committee, the Required Lenders, and the WLB Debtors have agreed to the settlement term sheet attached hereto as Exhibit A (the “**Settlement Term Sheet**”), which contemplates an extension of the Committee’s Challenge Deadline Termination Date as set forth below.

3. Solely with respect to the Committee, the Challenge Period Termination Date, solely with respect to the Letter Claims, is hereby extended through and including the Confirmation Date (as such term is defined in the *Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates* [Docket No. 788-1] (as may be amended, modified, or supplemented from time to time in accordance with the terms thereof, the “**Plan**”); provided that amendments to the Letter Claims shall only be permitted to the extent such amendments would be permitted under Bankruptcy Rule 7015 and Rule 15 of the Federal Rules of Civil Procedure as if the Committee had properly commenced a Challenge based upon the Letter Claims on or before January 7, 2019; provided further that the Challenge Deadline Termination Date with respect to the Letter Claims shall be automatically extended through the Plan Effective Date (as defined in the Plan) when the Confirmation Date occurs; provided further that if the Court denies confirmation of the Amended Plan (as defined in the Settlement Term Sheet) or if the Amended Plan is withdrawn, the Challenge Period Termination Date with respect to the Letter Claims is extended through three (3) business days after such denial or withdrawal (the “Extended Challenge Period Termination Date”). Upon the filing by the Committee of a standing motion and complaint commencing a Challenge with respect to the Letter Claims on or before the Extended Challenge Period Termination Date, the Extended Challenge Period Termination Date shall be further extended to the earlier of (a) the date that is one (1) business day after the Court rules on such request, and (b) twenty-one (21) days after filing the standing

motion; provided that, upon request of the WLB Debtors and the Required Lenders, the Committee will seek an expedited hearing on the standing motion on shortened notice.

4. The Challenge Period Termination Date or the Extended Challenge Period Termination Date for the Committee may be further extended to such later date that has been agreed to in writing (which writing may be via electronic mail), by the Committee and the Required Lenders, and with notice to the Court.

5. No other provision of the Final DIP Order shall be affected by this Stipulation.

6. In the event this Stipulation is so-ordered by the Court after the expiration of the current Challenge Period Termination Date, the Challenge Period Termination Date shall be extended with retroactive effect.

7. This Stipulation shall be, upon approval by the Court, binding on all parties in interest in the above-captioned proceeding and contains the entire agreement by and between the parties hereto, and all prior understandings or agreements with respect thereto, if any, are merged into this Stipulation.

**THE FOREGOING STIPULATION IS HEREBY APPROVED AND SO ORDERED.**

Signed: January \_\_, 2019

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DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE

**AGREED AS TO FORM AND CONTENT:**

Dated: January 22, 2019

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# **EXHIBIT A**

The following is a summary term sheet (the “Term Sheet”) of certain proposed terms and modifications to the *Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates* [Docket No. 788-1] (as may be amended, modified, or supplemented from time to time in accordance with the terms thereof, the “Plan”) and the Sale Transaction Documents (as defined in the Plan), as applicable. Each capitalized term that is not defined herein shall have the meaning ascribed to such term in the Plan. A plan incorporating the terms of this Term Sheet shall be referred to as the “Amended Plan.”

**THIS TERM SHEET HAS BEEN PREPARED FOR SETTLEMENT DISCUSSION PURPOSES ONLY AND SHALL NOT CONSTITUTE AN ADMISSION OF LIABILITY BY ANY PARTY, BE ADMISSIBLE IN ANY ACTION RELATED TO THE MATTERS ADDRESSED HEREIN, OR CONSTITUTE A WAIVER OF ANY RIGHTS OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS (THE “COMMITTEE”) WITH RESPECT TO THE PLAN OR ANY OTHER DOCUMENTS CONTEMPLATED BY EACH OF THE FOREGOING.**

**THIS TERM SHEET IS SUBJECT TO MATERIAL CHANGES AND IS BEING DISTRIBUTED FOR DISCUSSION AND SETTLEMENT PURPOSES ONLY AND IS SUBJECT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND OTHER SIMILAR STATE AND FEDERAL STATUS, RULES, AND LAWS.**

Agreement	Description
<p><b>Payments Under First Day Orders</b></p>	<p>On or before the Plan Effective Date, the WLB Debtors shall pay: (a) all unpaid amounts authorized by the <i>Final Order (I) Authorizing the Payment of Specified Trade Claims and Outstanding Orders</i>, and (II) <i>Confirming Administrative Expense Priority of Outstanding Orders</i> [Docket No. 512] and reflected in the initial DIP budget dated as of October 8, 2018, subject to the Final DIP Order, and (b) all unpaid amounts authorized by the <i>Final Order Authorizing the Debtors to (I) Honor Prepetition Obligations to Customers in the Ordinary Course of Business and (II) Continue, Renew, Replace, Implement, or Terminate Customer Programs</i> [Docket No. 510] and reflected in the initial DIP budget dated as of October 8, 2018, subject to the Final DIP Order.</p>
<p><b>No Material Changes to Cure Schedule</b></p>	<p>With respect to the Core Assets, there shall be no material reduction in the number of executory contracts or unexpired leases listed on the <i>Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases</i> [Docket No. 874] (the “<u>Assumption Schedule</u>”) or the cure amounts set forth therein without the reasonable consent of the Committee.</p> <p>With respect to the Non-Core Assets: (a) to the extent the WLB lenders purchase the Non-Core Assets, there shall be no material reduction in the number of executory contracts or unexpired leases listed on the Assumption Schedule or the cure amounts set forth therein without the reasonable consent of the Committee, and (b) to the extent a third party purchases the Non-Core Assets, the Debtors shall use commercially reasonable efforts to cause such party to assume the executory contracts or unexpired leases listed on the Assumption Schedule and pay the cure amounts set forth therein.</p>



Agreement	Description
<b>Distribution to General Unsecured Claims and Payment of General Unsecured Claims Administration Costs</b>	<p>Amended Plan shall provide \$3,250,000 in the aggregate (the “<u>Settlement Amount</u>”) to be used for (1) the General Unsecured Claims Amount (i.e., the amount available for distribution to all Holders of Allowed General Unsecured Claims)<sup>1</sup> and (2) the payment of all compensation, fees, and expenses of the Claims Administrator and its professionals, or any other professional working at the direction of the Claims Administrator.</p> <p>The Settlement Amount shall be fixed and (1) not subject to change based on the aggregate amount of General Unsecured Claims, (2) not subject to reduction on account of distributions to holders of all Allowed (a) First Lien Secured Claims, (b) Administrative Claims (including Professional Fee Claims), (c) Priority Tax Claims, (d) Other Priority Claims, or (e) Other Secured Claims, and (3) not subject to reduction on account of any payments made by or to the Plan Administrator or Liquidating Trustee.<sup>2</sup></p> <p>The Amended Plan shall be modified to provide that the Holders of First Lien Deficiency Claims will waive, or be deemed to have waived, any recovery or distribution on account of any Allowed First Lien Deficiency Claims.<sup>3</sup></p>
<b>Assumption of Reclamation Obligations and Pension Plans</b>	<p>The Amended Plan and/or the Sale Transaction Documentation shall provide that the Successful Bidder will assume (a) all of the reclamation obligations associated with the Purchased US Assets and Purchased US Business (each as defined in the Stalking Horse Purchase Agreement) and (b) (as frozen) (i) the Beulah Savage Plan, (ii) the Westmoreland Retirement Plan, and (iii) the Elkol-Sorenson Plan (each as defined in the Disclosure Statement).</p>
<b>Waiver of Avoidance Actions</b>	<p>Avoidance Actions against trade vendors and recipients of royalty payments shall be waived.</p>

<sup>1</sup> This amount assumes the cash payment made by the Debtors to modify any Retiree Benefits as provided for under the Proposal and under Section 1114 of the Bankruptcy Code will be paid from a source other than the General Unsecured Claims Amount. Capitalized terms in this footnote shall have the meanings ascribed to them in the *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* [Docket No. 1091] (the “1113/14 Motion”). The WLB Debtors and the WLB lenders agree not to propose or support any settlement of the 1113/14 Motion that specifically provides for the allowance of a General Unsecured Claim payable from the Settlement Amount.

<sup>2</sup> Note: Any structural changes to the Plan necessary to achieve this result to be discussed.

<sup>3</sup> The WLB Debtors will use their reasonable best efforts to cause the WMLP Debtors to waive any right to a distribution on account of Allowed General Unsecured Claims that would otherwise share in the General Unsecured Claims Amount.

Agreement	Description
<b>Release Definitions</b>	<p>The Committee, the members thereof, and their respective professionals, solely in their capacity as such, shall be included in the definitions of Exculpated Parties, Released Parties, and Releasing Parties under the Amended Plan.</p>
<b>Claims Administrator</b>	<p>The Amended Plan shall establish a post-Plan Effective Date claims reconciliation process for the reconciliation of General Unsecured Claims that would be satisfied from the General Unsecured Claims Amount. A designee from the Committee will be appointed as the claims administrator for the reconciliation process under the Amended Plan (the “<u>Claims Administrator</u>”), selected by the Committee and in consultation with the WLB Debtors and the Required Consenting Stakeholders, with duties relating to, among other things, performing the General Unsecured Claims reconciliation and settlement process (including filing any necessary objections and establishing any reserves), making distributions to the holders of Allowed General Unsecured Claims, and such other matters as may be agreed upon between the WLB Debtors, the Plan Administrator, and the Committee. The WLB Debtors, the Plan Administrator, and the Liquidating Trustee, as applicable, shall cooperate with the Claims Administrator and provide any information to the Claims Administrator necessary to perform such duties. The Claims Administrator shall have exclusive authority and standing in the Bankruptcy Court regarding the foregoing matters.</p> <p>The Plan Administrator, the Liquidating Trustee, and the Claims Administrator shall confer following the governmental unit claims bar date (i.e., April 8, 2019 at 5:00 p.m. (Prevailing Central Time)) regarding the administration and reconciliation of any non-priority claim asserted by any Governmental Unit against the WLB Debtors.</p> <p>The Claims Administrator may employ professionals to assist in carrying out its duties. All fees, costs and expenses of the Claims Administrator and its professionals shall be payable solely from the Settlement Amount.</p>
<b>Dissolution of Statutory Committee</b>	<p>The Amended Plan shall be modified to provide that (a) the Committee will remain in place with respect to the WLB Debtors solely for the purpose of addressing (i) all final fee applications for all professionals, and (ii) the resolution of any appeals of the Confirmation Order, (b) the members of the Committee are discharged from all of their duties to the WLB Debtors as of the date that the Committee is dissolved with respect thereto, and (c) the Committee remains in place as to the WMLP Debtors until those estates are resolved.</p> <p>The Claims Administrator shall constitute a successor-in-interest to the Committee in connection with any motions, objections, or requests for relief with respect to General Unsecured Claims filed by the Committee that remain pending as of the Plan Effective Date, and the Claims Administrator shall be deemed substituted for the Committee in all such pending matters without any further action by the Committee, the Claims</p>

Agreement	Description
	Administrator or the Bankruptcy Court.
<b>Committee Support</b>	The Committee will agree to support, and will not directly or indirectly oppose, the Plan, including, without limitation, by encouraging Holders of General Unsecured Claims to vote to approve the Amended Plan and take any and all necessary or appropriate actions in furtherance of the transactions contemplated under the Amended Plan.
<b>Challenge Deadline</b>	The Challenge Deadline Termination Date <sup>4</sup> will be extended through the Confirmation Date, solely with respect to the claims identified and described to the WLB Ad Hoc Group’s advisors prior to the initial Challenge Period Termination Date of January 7, 2019; <u>provided</u> that, the Challenge Deadline Termination Date with respect to such claims shall be automatically extended through the Plan Effective Date when the Confirmation Date occurs; <u>provided further</u> that if Court denies confirmation of the Amended Plan or if the Amended Plan is withdrawn, the Challenge Period Termination Date with respect to such claims is extended through three (3) business days after such denial or withdrawal (the “ <u>Extended Challenge Period Termination Date</u> ”). Upon the filing by the Committee of a standing motion and complaint commencing a Challenge with respect to such claims on or before the Extended Challenge Period Termination Date, the Extended Challenge Period Termination Date shall be further extended to the earlier of (a) the date that is one (1) business day after the Court rules on such request, and (b) 21 days after filing the standing motion; <u>provided</u> that, upon request of the WLB Debtors and the Required Lenders, the Committee will seek an expedited hearing on the standing motion on shortened notice.
<b>UCC Professional Fees and Expenses</b>	Provided that the fees and expenses of the Committee professionals are consistent with the estimates provided to the WLB Lenders on January 19, 2019, the WLB lenders agree not to directly or indirectly oppose (a) the payment of the fees and expenses of the Committee’s Professionals pursuant to and in accordance with the Interim Compensation Order and (b) any interim or final fee applications filed by the Committee’s Professionals, (but in each case of subclause (a) and (b), without prejudice to the rights of any party-in-interest with respect to the Fee and Expense Allocation (as defined in the Interim Compensation Order)). Moreover, until the Amended Plan is either denied or withdrawn (or the Committee professionals have a reasonable good faith basis to believe the Amended Plan will be withdrawn or not be confirmed and have communicated that belief to the Required Lenders in advance), the Committee professionals will not incur any fees relating to the investigation or the Challenge.

<sup>4</sup> As such term is defined in the *Stipulation and Agreed Order Extending Challenge Period Termination Date in Final DIP Order* [Docket No. 995].

Agreement	Description
<p><b>Plan/Confirmation Order</b></p>	<p>Each of the Amended Plan, the Plan Supplement, and the Confirmation Order shall be in form and substance acceptable to the Committee with respect to the provisions thereof (or documents therein) that impact the interests of Holders of General Unsecured Claims as set forth herein and in <u>Exhibit A</u> to this Term Sheet.</p>

**Exhibit A**

<b>Plan Provision</b>	<b>Modification</b>
I.A.4	Reference to 502(d) in the definition of Allowed should mirror the text of 502(d) and should apply only to claims disallowed pursuant to 502(d)
I.A.78	UCC should have consultation rights with respect to the amount of the Funded Liability Cap
I.A.111	UCC should have consultation rights with respect to the identity of the Plan Administrator
I.A.114	UCC should have consent rights with respect to the Plan Supplement documents to the extent that such documents materially relate to the provisions of this Term Sheet. For the avoidance of doubt, the UCC will not have consent rights over any of the Plan Supplement documents related to the transaction with the Stalking Horse Purchaser.
I.F	Confirmation Order should control over the terms of the Sale Transaction Documents
IV.F	UCC should have consultation rights with respect to the Wind-Down Amount
IV.S	UCC should have consultation rights with respect to the identity of the trustee of the Liquidating Trust
V.G	Time to reject a disputed/assumed executory contract should be 30 days (not 90 days) after the date that such dispute is resolved
VI.C.6	<i>De minimis</i> distribution threshold should be lowered to \$250
Articles VI, VII, and VIII generally	To be revised for consistency with this Term Sheet
VIII.D	Claimants that have filed proofs of claim should be given 14 days' notice before their claim is adjusted or expunged on the Claims Register
VIII.E	Debtors should be required to seek Bankruptcy Court authority to extend the deadline to object to claims and should not be permitted to extend the deadline unilaterally
VIII.G	Unsecured Claims filed after the Plan Effective Date should be allowed if permitted by order of the Bankruptcy Court
XI.B.4	Funding of the General Unsecured Claims Amount should not be waivable without UCC consent as a condition precedent to the Plan Effective Date
XI.B.7	Funding of the Professional Fee Escrow Account (to the extent it impacts payment of the UCC's professional fees) should not be waivable without UCC consent as a condition precedent to the Plan Effective Date