

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:

Westmoreland Coal Company, et al.,  
Debtors.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

**DECLARATION OF GERALD A. TYWONIUK IN SUPPORT OF THE  
EXPEDITED MOTION OF WESTMORELAND RESOURCE PARTNERS, LP AND ITS  
SUBSIDIARIES FOR ENTRY OF (I) AN ORDER (A) ESTABLISHING BIDDING AND  
SALE PROCEDURES WITH RESPECT TO THE SALE OF THE KEMMERER MINE  
AND SUBSTANTIALLY ALL ASSETS RELATED THERETO, (B) AUTHORIZING  
THE ENTRY INTO A STALKING HORSE AGREEMENT AND THE PROVISION OF  
STALKING HORSE PROTECTIONS, (C) SCHEDULING AN AUCTION AND SALE  
HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF  
AND (D) GRANTING RELATED RELIEF; AND (II) AN ORDER APPROVING THE  
SALE OF SUCH ASSETS AND GRANTING RELATED RELIEF**

I, Gerald A. Tywoniuk, hereby declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge and belief:

1. I am the Chairman of the Conflicts Committee (the "Conflicts Committee") of the Board of Directors of Debtor Westmoreland Resources GP, LLC ("WRG"), the general partner of debtor Westmoreland Resource Partners, LP ("WMLP").

2. I submit this declaration in support of the *Expedited Motion of Westmoreland Resource Partners, LP and its Subsidiaries for Entry of (I) an Order (A) Establishing Bidding and Sale Procedures with Respect to the Sale of the Kemmerer Mine and Substantially All Assets Related Thereto, (B) Authorizing the Entry into a Stalking Horse Agreement and the Provision of Stalking Horse Protections, (C) Scheduling an Auction and Sale Hearing and Approving the Form and Manner of Notice Thereof and (D) Granting Related Relief; and (II) An Order Approving the Sale of Such Assets and Granting Related Relief* (Docket No. 1101) (the

"Motion").<sup>1</sup> In particular, I submit this declaration to explain the reasons why the Conflicts Committee exercised its business judgment to authorize WMLP and its direct and indirect debtor subsidiaries (collectively, the "WMLP Debtors") to file the Motion and seek approval of the Bidding Procedures without first entering a definitive stalking horse agreement for the Kemmerer Assets.

3. Except as otherwise indicated, all statements set forth in this declaration are based on (a) my personal knowledge, (b) my review of relevant documents, (c) information provided to me by, or discussions with, the members of the Conflicts Committee or its advisors, and/or (d) information provided to me by, or discussions with, the management team of Westmoreland Coal Company ("WLB") and its affiliated debtors and debtors in possession (including the WMLP Debtors) (collectively, the "Debtors") or their advisors. If called to testify, I could and would testify to the facts set forth herein.

#### **The Conflicts Committee**

4. WRG, the general partner of WMLP, is a wholly owned subsidiary of WLB. Since that affiliation may give rise to conflicts of interest (and has from time to time), WRG's Board of Directors has a Conflicts Committee comprised solely of independent directors (currently numbering three). The Conflicts Committee's responsibilities include reviewing and assessing any conflicts of interest that may arise between WRG and WMLP and ensuring that the resolution of any such conflicts of interests is fair and reasonable to WMLP. In connection with the Debtors' restructuring efforts, the Conflicts Committee and the WMLP Debtors in August 2017 retained separate advisors to, among other things, help the Conflicts Committee fulfill these

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meanings set forth in the Motion.

duties. Those advisors include Lazard Frères & Co. LLC ("Lazard") as investment banker to the Conflicts Committee and the WMLP Debtors and Jones Day as counsel to the Conflicts Committee and conflicts counsel to the WMLP Debtors.

### **The WMLP Sale Protocol**

5. The WMLP Debtors have outstanding prepetition funded indebtedness of approximately \$326.8 million under that certain December 31, 2014 Financing Agreement, as amended (the "WMLP Term Loan"), which is secured by substantially all the assets of the WMLP Debtors. Prior to the filing of these cases, WLB and the WMLP Debtors negotiated with the WMLP Term Loan lenders regarding a restructuring of the WMLP Debtors' outstanding indebtedness under the WMLP Term Loan. In connection with those negotiations, the WMLP Debtors entered into certain waivers of default under the WMLP Term Loan that, among other things, required the WMLP Debtors to sell all of their assets.

6. In May 2018, the WMLP Debtors expanded the scope of Lazard's engagement for, among other things, Lazard to run a sale process (the "Sale Process") for the WMLP Debtors' assets. In June 2018, the WMLP Debtors worked with Lazard to develop and negotiate with the WMLP Term Loan lenders and WLB a protocol for the sale of all of the WMLP Debtors' assets, including the Kemmerer Assets, which was later incorporated with modifications into the Final Cash Collateral Order. Under the Conflicts Committee's charter and that sale protocol, the Conflicts Committee has the exclusive authority to decide whether, and on what terms, the WMLP Debtors will sell any of their assets, subject to certain consent rights.

### **Sale of the Kemmerer Assets**

7. During the nearly six-month Sale Process, the Conflicts Committee and the WMLP Debtors have worked closely with Lazard and our other professionals to ensure we would receive the highest and best offer for all the WMLP Debtors' assets, including the

Kemmerer Assets. Lazard has kept, and continues to keep, the Conflicts Committee apprised of the ongoing Sale Process. Among other things, Lazard has provided summaries and analyses of bids received during the Sale Process, including those bids received for the Kemmerer Assets.

8. After consultation with Lazard and its other professionals, the Conflicts Committee determined that the WMLP Debtors should pursue negotiations for the sale of the Kemmerer Assets with the three parties submitting phase two bids for the Kemmerer Assets and the WMLP term loan lenders who subsequently submitted a credit bid. The WMLP Debtors' negotiations with the three remaining interested parties (WLB's secured lenders withdrew their bid) are ongoing.

9. While those negotiations have been productive, the WMLP Debtors are running out of time to get Court approval and close a sale of the Kemmerer Assets. In the Final Cash Collateral Order, the WMLP Debtors agreed to meet certain milestones with respect to sale of their assets. The current milestones include, among others: (a) a January 25, 2019 milestone to file a motion seeking approval of bidding procedures for the sale of the Kemmerer Assets; (b) a February 15, 2019 milestone to obtain Court approval of bidding procedures; and (c) a March 11, 2019 milestone to obtain Court approval of the sale of the Kemmerer Assets. After consultation with Lazard and its other professionals, the Conflicts Committee determined that the WMLP Debtors likely will not be able to achieve these and other milestones if the WMLP Debtors waited to file the Motion until the ongoing negotiations for the sale of the Kemmerer Assets are completed.

10. Moreover, the WLB Debtors are seeking to sell their assets pursuant to a proposed chapter 11 plan. WLB employs all individuals that manage and work at the Kemmerer mine and provides the back office systems and processes for the Kemmerer mine. The WLB Debtors'

asset sale contemplates the buyer's acquiring, among other assets, the WLB's management employees and back office systems. As a result, the WMLP Debtors will need, at a minimum, the buyer of the WLB Debtors' assets to provide the WMLP Debtors with continued management and back office support until the WMLP Debtors sell all of their assets. The Conflicts Committee, after consultation with Lazard and its other advisors, determined that it is in the best interests of the WMLP Debtors estates to (a) minimize the timeframe during which the WMLP Debtors' estates require support from the buyer of the WLB Debtors' assets and (b) transition the WLB employees working at the WMLP Debtors' mines to a buyer of those mines as quickly as practicable.

11. Given these time constraints and the Conflicts Committee's determination that it was not likely that the WMLP Debtors would complete their negotiations and enter into an agreement with a stalking horse with sufficient time afterward to achieve their milestone of filing a motion for approval of bidding procedures, the Conflicts Committee determined, after consultation with Lazard and its other professionals, that it is in the best interest of the WMLP Debtors for them to file the Motion on January 18, 2019.

12. Based on Lazard's analyses of the bids for the Kemmerer Assets and the progress of negotiations respecting the sale of the Kemmerer Assets, the Conflicts Committee determined, after consultation with Lazard and its other professionals, that pursuing the sale transaction for the Kemmerer Assets described in the Motion will maximize the value of the Kemmerer Assets and is in the best interests of the WMLP Debtors' estates. Those other factors include: (a) the WMLP Debtors' obligations to sell all their assets under the WMLP Term Loan waivers of default and the Final Cash Collateral Order; (b) the need for transition services for the Kemmerer Assets after the WLB Debtors' assets are sold as contemplated in the WLB Debtors' currently

proposed plan of reorganization; and (c) the buyer's assumption of Kemmerer-related liabilities may allow the WMLP Debtors to avoid a potential interdebtor dispute with the WLB Debtors respecting those liabilities. Accordingly, the Conflicts Committee authorized the WMLP Debtors to file the Motion.

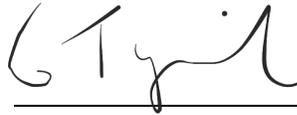
13. Although the WMLP Debtors filed the Motion without a stalking horse in place, the Conflicts Committee determined it is in the WMLP Debtors' best interests to continue pursuing a stalking horse. Given that its professionals advised the Conflicts Committee that Stalking Horse Protections are customary and normally necessary to induce a party to serve as a stalking horse for a competitive bidding process, the Motion seeks authority for the WMLP Debtors to agree to provide the Stalking Horse Protections to any non-lender Stalking Horse Bidder. If the Conflicts Committee later authorizes the WMLP Debtors to agree to provide all or some of the Stalking Horse Protections authorized by the Court, the Conflicts Committee does not intend to authorize the WMLP Debtors to terminate any Stalking Horse APA unless the WMLP Debtors receive an Alternative Bid with additional consideration in excess of the Stalking Horse Protections ultimately agreed to. Consequently, the Stalking Horse Protections will not diminish the value of the WMLP Debtors' estates.

**Assignment and Assumption of Related Executory Contracts and Unexpired Leases**

14. Based upon the nature of the Kemmerer Assets and the negotiations conducted to date, I understand that any buyer of the Kemmerer Assets will likely require the WMLP Debtors to assume and assign certain executory contracts and unexpired leases associated with the Kemmerer Assets (the "Executory Contracts"). As a result, the Motion seeks approval of a protocol for identifying contracts that the WMLP Debtors will assign and assume in connection with the sale of the Kemmerer Assets. Moreover, the Form APA attached to the Motion requires the buyer to pay cure costs, if any, associated with the assumption of the Executory Contracts.

As a result, and because the Conflicts Committee determined that pursuing the sale transaction for the Kemmerer Assets described in the Motion will maximize the value of the Kemmerer Assets and is in the best interests of the WMLP Debtors' estates, the Conflicts Committee determined, after consultation with Lazard and its other professionals, that the WMLP Debtors' assuming and assigning any Executory Contracts identified by the ultimate buyer and included in that buyer's APA will be in the best interests of WMLP Debtors' estates.

Dated: January 24, 2019



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Gerald A. Tywoniuk  
Chairman, Conflicts Committee of the  
Board of Directors of Westmoreland  
Resources GP, LLC