

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

)		
In re:)	Chapter 11	
)		
WESTMORELAND COAL COMPANY, <i>et al.</i> , ¹)	Case No. 18-35672 (DRJ)	
)		
Debtors.)	(Jointly Administered)	
)		

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER
APPROVING OMNIBUS CLAIMS OBJECTION PROCEDURES
AND FILING OF SUBSTANTIVE OMNIBUS CLAIMS OBJECTIONS**

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 WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. 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.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)² respectfully state the following in support of this motion (this “Motion”).

¹ Due to the large number of debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent in these chapter 11 cases at www.donlinrecano.com/westmoreland. Westmoreland Coal Company’s service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

² A detailed description of the Debtors’ businesses and the reasons for commencing the chapter 11 cases is set forth in the *Declaration of Jeffrey S. Stein, Chief Restructuring Officer of Westmoreland Coal Company, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 54] (the “First Day Declaration”).

Relief Requested

1. The Debtors seek entry of an order approving the omnibus claims objection procedures set forth herein and attached to the Order as **Exhibit 1**.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter 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 (the “Amended Standing Order”). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The statutory bases for the relief requested herein are sections 105(a) and 502(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rule 3007, and rule 3007-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

Background

5. Westmoreland Coal Company and its Debtor and non-Debtor affiliates operate the sixth-largest coal-mining enterprise in North America, including 19 coal mines in six states and Canada. The Debtors primarily produce and sell thermal coal to investment grade power plants under long-term, cost-protected contracts, as well as to industrial customers and barbeque charcoal manufacturers. Headquartered in Englewood, Colorado, the Debtors and their non-Debtor

subsidiaries employ approximately 2,971 individuals. The Debtors' revenue for the twelve-month period that ended August 31, 2018, totaled approximately \$850 million. As of October 9, 2018 (the "Petition Date"), the Debtors' aggregate prepetition indebtedness totaled approximately \$1.1 billion.

6. On the Petition Date, each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On October 18, 2018, the United States Trustee (the "U.S. Trustee") appointed the Committee in the Debtors' bankruptcy cases [Docket No. 206]. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

Claims Reconciliation Process

7. On November 8, 2018 and November 9, 2018, the Debtors filed their respective statements of financial affairs and schedules of assets and liabilities [Docket Nos. 378-451, 456], pursuant to Bankruptcy Rule 1007 and the *Order Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs* [Docket No. 82].

8. On November 15, 2018, the Court entered an *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(B)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(B)(9) Requests, and (IV) Approving Notice of Bar Dates* [Docket No. 524] (the "Bar Date Order") pursuant to which the Court, among other things, established December 12, 2018, at 5:00 p.m. (prevailing Central Time), as the

deadline for all non-governmental units³ (as defined in section 101(27) of the Bankruptcy Code) holding or wishing to assert a “claim” (as defined in section 101(15) of the Bankruptcy Code).

9. On November 17, 2018, the Claims and Noticing Agent mailed notice of the Bar Date Order (the “Bar Date Notice”) to thousands of potential claimants in accordance with the procedures outlined therein. *See Affidavits of Publication Notice of Bar Date* [Docket Nos. 585-586]. An employee of the Claims and Noticing Agent directed and supervised the delivery of the Bar Date Notice via first class mail, overnight mail, or via email.

Proposed Objection Procedures

10. To date, approximately 1,240 proofs of claim have been filed against the Debtors, totaling over \$2.7 billion in the aggregate.⁴ The Debtors, together with their advisors, are in the process of reviewing and reconciling all claims asserted against their estates. To expedite and ultimately complete the claim reconciliation process in a timely, efficient, and cost-effective manner, the Debtors seek to implement procedures, substantially in the form attached to the Order as **Exhibit 1** (the “Objection Procedures”). The Objection Procedures describe the key aspects of the Debtors’ proposed claims objection process, including, among other things:

- (a) the form of omnibus objection (each, an “Omnibus Objection”) to be submitted by the Debtors;
- (b) the types of exhibits and supporting documentation that the Debtors will include with each Omnibus Objection;
- (c) the form of the notice provided to affected creditors (the “Objection Notice”);

³ The deadline for all governmental units asserting a “claim” (as defined in section 101(5) of the Bankruptcy Code) against the Debtors that arose on or prior to the Petition Date to file written proof of such claim is April 8, 2019, at 5:00 p.m. (prevailing Central Time).

⁴ The Debtors also anticipate additional claims will be filed in the form of rejection damages claims.

- (d) the information necessary for affected creditors to attempt to resolve the objection to their claim and/or file a formal response thereto, and the implications of failing to timely resolve or respond to an objection;
- (e) information relating to filing a formal reply to a filed response; and
- (f) information relating to discovery and hearings on Omnibus Objections.

11. To protect the due process rights of creditors, the Debtors will comply with the procedural safeguards for omnibus claim objections set forth in Bankruptcy Rule 3007(e) and Bankruptcy Local Rule 3007-1. The Debtors also intend to serve affected creditors with a customized Objection Notice, substantially in the form attached to the Order as **Exhibit 2**, which will include, among other things: (a) the name of the claimant; (b) number of the applicable proofs of claim from the Debtors' claims register; (c) the basis of the objection to each particular claim; (d) the response date and response procedures; and (e) the date, time, and location of the hearing and related procedures.⁵

**Relief Pursuant to Bankruptcy
Rule 3007(c) and Bankruptcy Local Rule 3007-1**

12. Although the Debtors expect to object to a number of claims on the grounds enumerated in Bankruptcy Rule 3007(d), certain claims may necessitate objections on additional grounds not expressly set forth therein (collectively, the "Additional Grounds"), including that such claims, in whole or in part:

- (a) are inconsistent with the Debtors' books and records;
- (b) fail to specify the asserted claim amount (other than "unliquidated");
- (c) seek recovery of amounts for which the Debtors are not liable;
- (d) are incorrectly or improperly classified;

⁵ While the Objection Notice generally will be in the form attached to the Order, it may be tailored to address issues specific to particular creditors, claims or objections, as necessary and appropriate.

- (e) have not been formally withdrawn by the claimant through the filing of a withdrawal of proof of claim form, substantially in the form attached to the Order as **Exhibit 3** or through the entry of a Court order indicating withdrawal of the claim;
- (f) are filed against non-Debtors or are filed against multiple Debtors;
- (g) fail to specify a Debtor against whom the claim is asserted;
- (h) should be disallowed pursuant to section 502 of the Bankruptcy Code;
- (i) are disallowed or subordinated to all claims and interests senior to or equal to the asserted claim or interest arising out of the purchase or sale of a security of the Debtor or affiliate pursuant to section 510(b) of the Bankruptcy Code; or
- (j) fail to sufficiently specify the basis for the claim or provide sufficient supporting documentation therefor.

13. To minimize the cost, confusion, and delay otherwise attendant to preparing and filing individual objections on a claim-by-claim basis, the Debtors seek to object, as contemplated by Bankruptcy Rule 3007(c), to certain claims on the Additional Grounds outlined above in an omnibus objection format. The relief sought in this Motion will allow the Debtors to complete the claims reconciliation process in a timely, efficient, and cost-effective manner by avoiding the expense and delay attendant in preparing and filing hundreds of individualized objections based on the same or similar underlying grounds. Notably, the Objection Procedures protect creditors' due process rights by implementing the same safeguards for omnibus objections set forth in Bankruptcy Rule 3007(e) and Bankruptcy Local Rule 3007-1, and by providing creditors with individualized notices as described above.

Basis for Relief

14. Section 502(a) of the Bankruptcy Code provides that “[a] claim or interest, proof of which is filed under section 501 of this title is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). Bankruptcy Rule 3001(f) states that “[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and

amount of the claim.” Fed. R. Bankr. P. 3001(f). Under section 1111(a) of the Bankruptcy Code, scheduled claims are treated as proofs of claim. *See* 11 U.S.C. § 1111(a) (“A proof of claim . . . is deemed filed under section 501 of this title for any claim . . . that appears in the schedules . . . except a claim . . . that is scheduled as disputed, contingent, or unliquidated.”). As such, the Debtors must review all claims in these chapter 11 cases as part of their claims reconciliation process.

15. In addition to the grounds enumerated in Bankruptcy Rule 3007(d) for filing omnibus objections to claims, Bankruptcy Rule 3007(c) affords the Court discretion to authorize omnibus objections based upon grounds beyond those explicitly delineated by Bankruptcy Rule 3007(d). *See* Fed. R. Bankr. P. 3007(c) (“Unless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.”). Furthermore, Bankruptcy Local Rule 3007-1 expressly permits a debtor, subject to prior court approval, to file omnibus objections to claims.

16. Section 105(a) of the Bankruptcy Code provides that a bankruptcy court may “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the [Bankruptcy Code].” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, the Court has expansive equitable power to fashion any order or decree that is in the interest of preserving or protecting the value of a debtor’s assets, as long as the powers conferred under section 105 of the Bankruptcy Code are “exercised in a manner that is consistent with the Bankruptcy Code.” *Stern v. Stern (In re Stern)*, 204 F.3d 1117 (5th Cir. 1999) (quoting *Chiasson v. J. Louis Matherne & Assocs. (In re Oxford Management, Inc.)*, 4 F.3d 1329, 1334 (5th Cir. 1993)); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1069 (2d. Cir. 1983)

(“[A] bankruptcy judge must have substantial freedom to tailor his orders to meet differing circumstances.”).

17. Authorizing the Debtors to file omnibus objections to claims consistent with the Objection Procedures is an appropriate use of the Court’s power under section 105(a) of the Bankruptcy Code and conforms to the spirit of Bankruptcy Rule 3007 and Bankruptcy Local Rule 3007-1, the underlying goal of which is to balance the due process rights of creditors with the efficient administration of large chapter 11 cases.

18. The proposed Objection Procedures would provide a cost-effective and efficient framework for the careful review, prosecution, and reconciliation of claims by, among other things: (a) providing greater certainty in administering the objection process; (b) promoting the consensual resolution of claims objections or, alternatively, establishing an efficient and fair mechanism to settle claims objections; and (c) reducing the cost, time, and delay of prosecuting claims objections. At the same time, the proposed Objection Procedures respect creditors’ due process rights by, among other things, implementing the safeguards set forth for omnibus objections already authorized under Bankruptcy Rule 3007(e) and Bankruptcy Local Rule 3007-1, and requiring service of the Objection Notice on affected creditors in full compliance with the due process requirements of the Bankruptcy Code, Bankruptcy Rules, and Bankruptcy Local Rules.

19. Similarly, allowing the Debtors to object to claims on the Additional Grounds in an omnibus format will promote the efficient and cost-effective administration of the Debtors’ estates. Specifically, the relief requested will save the Debtors the time and expense of filing potentially hundreds of individual claim objections, some of which could be duplicative and confusing to creditors. The relief requested will permit the Debtors to run a well-organized, efficient, and cost-

effective claims objection process, and all parties in interest will benefit from a streamlined process that will result in fewer pleadings, fewer hearings, and greater efficiency.

Reservation of Rights

20. Notwithstanding the relief granted in this Motion and any actions taken pursuant to such relief, nothing in this Motion, the Order, or the Objection Procedures shall be deemed as: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of any right of any Debtor to dispute any prepetition claims on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of any right of any Debtor under the Bankruptcy Code or any other applicable law.

Notice

21. 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 WMLP Debtors’ term loan facility due 2018; (g) the ad hoc committee of certain lenders under the WMLP Debtors’ term loan facility due 2018; (h) the administrative agent under the WLB Debtors’ debtor-in-possession financing facility; (i) the lenders under the WLB Debtors’ debtor-in-possession financing facility; (j) counsel to the Conflicts Committee of the Board of Directors of Westmoreland Resources GP, LLC; (k) the

Creditors' Committee and any other 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 United States 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 United States Securities and Exchange Commission; (q) the Pension Benefit Guaranty Corporation; and (r) 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.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
January 30, 2019

/s/ Patricia B. Tomasco

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Certificate of Service

I certify that on January 30, 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