

**THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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

**ORDER AUTHORIZING RETENTION AND EMPLOYMENT OF
DRINKER BIDDLE & REATH LLP AS SPECIAL LABOR AND EMPLOYEE BENEFIT
COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE
NUNC PRO TUNC TO JANUARY 7, 2019**

Upon the application, (the “*Application*”),² of the Debtors for entry of an order authorizing the Debtors to retain and employ Drinker Biddle & Reath LLP (“*Drinker Biddle*”) as their special labor and employee benefit counsel effective *nunc pro tunc* to January 7, 2019, pursuant to Bankruptcy Code sections 105(a), 327(e), 328, 330, 331 and 1107, Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016-1; and the Court having reviewed the Application, the Slusher Declaration, and the Grafton Declaration (together with the Slusher Declaration, the “*Declarations*”); and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and the Court having found that venue of this proceeding and the Application in this District is proper pursuant to 28 U.S.C. §§ 1408 and

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 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Application.

1409; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court being satisfied with the representations made in the Application and the Declarations, and based on those representations, having found that Drinker Biddle's employment is in the best interests of the Debtors' estates and that Drinker Biddle is a "disinterested person," as defined in section 101(14) of the Bankruptcy Code and as required by Section 327(e) of the Bankruptcy Code; and the Court having determined that the Debtors provided adequate and appropriate notice of the Application under the circumstances and that no other or further notice is required; and the Court having heard statements in support of the Application at a hearing, if any, held before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Application and at the Hearing, if any, establish just cause for the relief granted herein; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Application is granted to the extent set forth herein.
2. The Debtors are authorized to retain and employ Drinker Biddle as their special labor and employee benefits counsel *nunc pro tunc* to January 7, 2019, in accordance with the terms and conditions set forth in the Application and in the Engagement Letter attached hereto as Exhibit 1, as modified by this Order.
3. Drinker Biddle is authorized to provide the Debtors with the professional services as special labor and employee benefits counsel all as described in the Application and the

Engagement Letter. Specifically, but without limitation, Drinker Biddle will represent the Debtors in labor and employee benefits matters, including representation involving sections 1113 and 1114 of the Bankruptcy Code and the Coal Act.

4. Drinker Biddle shall file applications for monthly, interim, and final allowance of compensation for professional services rendered and reimbursement of expenses incurred in connection with the Debtors' chapter 11 cases in compliance with sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, Local Rules, and any other applicable procedures and orders of the Court, including the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [ECF No. 495], *provided, however*, that Drinker Biddle shall not seek reimbursement from the Debtors' estates for any fees incurred in defending any of Drinker Biddle's fee applications in these Bankruptcy Cases.

5. For billing purposes, Drinker Biddle shall keep its time in one tenth (1/10) hour increments in accordance with the U.S. Trustee Guidelines. Drinker Biddle also shall make a reasonable effort to comply with the United States Trustee's requests for information and additional disclosure as set forth in the U.S. Trustee Guidelines, both in connection with the Application and the interim and final fee applications to be filed by Drinker Biddle in the Bankruptcy Cases.

6. Drinker Biddle shall not charge a markup to the Debtors with respect to fees billed by contract attorneys who are hired by Drinker Biddle to provide services to the Debtors and shall ensure that any such contract attorneys are subject to conflict checks and disclosures in accordance with the requirements of the Bankruptcy Code and Bankruptcy Rules.

7. Notwithstanding anything to the contrary in the Application, the Engagement Letter, or the Declarations attached to the Application, any reimbursement provisions allowing the

reimbursement of fees and expenses incurred in connection with participating in, preparing for, or responding to any action, claim, suit, or proceeding brought by or against any party that relates to the legal services provided under the Engagement Letter and fees for defending any objection to Drinker Biddle's fee applications under the Bankruptcy Code are not approved pending further order of the Court.

8. Drinker Biddle shall provide ten business days' notice to the Debtors, the United States Trustee, counsel to the MLP Ad Hoc Group,³ the WLB Ad Hoc Group⁴ and any official committee before any increases in the rate set forth in the Application or the Engagement Letter are implemented and shall file such notice with the Court. The United States Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in § 330 of the Bankruptcy Code, and the Court retains the right to review any rate increase pursuant to § 330 of the Bankruptcy Code.

9. Drinker Biddle shall not be compensated for any services provided to Debtor by or on behalf of Venable pursuant to the *Amended Order Authorizing the Retention and Employment of Venable LLP as Special Labor and Employee Benefit Counsel for the Debtors Nunc Pro Tunc to the Petition Date* entered on December 5, 2018 [ECF No. 706].

10. Drinker Biddle will use its reasonable efforts to avoid duplication of services provided by any of the Debtors' other retained professionals in the Bankruptcy Cases.

³ As defined in the *Final Order (I) Authorizing the MLP Debtors to Use Cash Collateral Pursuant to 11 U.S.C. 363, (II) Granting Certain Protections to Prepetition Lenders Pursuant to 11 U.S.C. 105, 361, 362 and 507, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [ECF No. 521].

⁴ As defined in the *Verified Statement of Kramer Levin Naftalis & Frankel LLP and Porter Hedges LLP Pursuant to Bankruptcy Rule 2019* [ECF No. 496].

11. To the extent the Application, the Slusher Declaration, the Grafton Declaration, or the Engagement Letter is inconsistent with this Order, the terms of this Order shall govern.

12. The Debtors and Drinker Biddle are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

13. Notice of the Application as provided therein is deemed to be good and sufficient notice of such Application, and the requirements of the Local Rules are satisfied by the contents of the Application.

14. Notwithstanding anything to the contrary in the Application, the Declarations, or the Engagement Letter, this Court retains exclusive jurisdiction over any dispute relating to the services provided by Drinker Biddle in the Bankruptcy Cases.

15. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

16. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation or enforcement of this Order.

Dated: _____, 2019
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Engagement Letter



Mr. Gregory J. Ossi
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202-842-8465 Fax
gregory.ossi@dbr.com

Law Offices

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Washington, DC
20005-1209

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www.drinkerbiddle.com

CALIFORNIA

DELAWARE

ILLINOIS

LONDON

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NEW YORK

PENNSYLVANIA

TEXAS

WASHINGTON D.C.

January 7, 2019

VIA EMAIL

Ms. Jennifer S. Grafton
Chief Administrative and Legal Officer
Westmoreland Coal Company
9540 South Maroon Circle, Suite 300
Englewood, CO 80112

Re: Engagement Letter - Westmoreland Coal Company

Dear Jen:

Thank you for asking Drinker Biddle & Reath LLP (the "Firm") to represent Westmoreland Coal Company (the "Company") in connection with the matter described in paragraph 1 below. This letter will confirm our engagement by the Company and will describe the basis on which our Firm will provide legal services. Should you ask us to represent the Company in other matters; those representations will be the subject of separate engagement letters similar to this one unless we agree in writing that this letter is sufficient.

1. **Client and Scope of Representation.** We will represent the Company in connection with special labor and benefit counseling. You may limit or expand the scope of our representation with respect to this matter from time to time, provided that any significant expansion of such representation must be agreed to by us in writing.

2. **Primary Lawyer; Fees and Expenses.** I will have primary responsibility for this representation and will utilize other Firm lawyers, Firm professionals, paralegals and legal assistants as may be appropriate in the circumstances. We will bill you hourly for our services. The principal factors in determining our fees will be the time and effort devoted to the matter and the hourly rates of the lawyers, Firm professionals, paralegals and legal assistants involved. My current hourly rate per the court order is \$720. Our current hourly rates for those lawyers we anticipate will be working on this matter range from \$925 for our most experienced partners to \$450 for our most junior associates. Our current hourly rates for paralegals we anticipate will be working on this matter range from \$350 to \$300. These rates are subject to change annually, on January 1, based on each individual's advancement in seniority and other factors. Services rendered after the date of any rate change will be billed at the new rates. In any event, all time will be billed in one-tenth of an hour (0.1) increments.

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In addition, the Company will be billed for disbursements as outlined in the attached Statement on Charges for Ancillary Services. Depending on the amount, we may send bills from expert witnesses and other third-parties or vendors to you for direct payment. We will invoice the Company monthly for our time and disbursements, and the Company agrees to pay us for such fees and disbursements immediately upon receipt.

3. Term of Engagement. Either of us may terminate this engagement at any time for any reason by written notice, subject on our part to applicable rules of professional conduct. In the event that we terminate the engagement prior to its conclusion, we will undertake such steps as are reasonably practicable to protect the Company's interests in the above matter, including, if so requested, suggesting to the Company possible successor counsel and providing them with whatever papers you have provided us. The Company agrees to pay our fees and reimburse us for expenses in connection with reviewing and/or copying files when they are transferred to successor counsel. If permission for withdrawal is required by a court, we will promptly apply for such permission, and the Company agrees to engage successor counsel.

4. Limited Advance Conflict Waiver. Our firm conducts a national law practice that represents clients located around the globe. Given the scope of the services we provide, it is necessary that we seek your consent to our representation of other clients, both current and future, who may have interests adverse to your interest in unrelated non-contentious matters (e.g., contract negotiations, real estate transactions, corporate and lease financings, the purchase or sale of assets) or whom we represent in connection with certain standard or routine proceedings that are not ordinarily thought to rise to the level of adverse claims (e.g., the service of subpoenas, representation of a debtor or other creditors in bankruptcies or restructurings where you may also be a creditor and utilize other counsel). You agree that you now consent - or will consent if asked - to our representation of other clients in such unrelated non-contentious matters. Note, however, that we do not ask that you now waive a conflict of interest arising in the context of litigation or the formal assertion of a claim against the Company and any such conflict, if it arose, would be separately addressed at that time.

We will bring these matters to your attention as required by the Rules of Professional Conduct. If at any time our Firm undertakes a representation of the type permitted by this section, the Firm will implement restrictions intended to prevent any person working on your matters from working on such other matter and ensure that confidential information maintained by us concerning you as a client is not disclosed to lawyers working on matters adverse to you.

5. Records Retention. Our Firm's current policy is to retain client files, and the Firm's related work product and internal files, for seven years after the conclusion of the matter, unless otherwise agreed by the Firm and you. The Firm reserves the right to change its retention policy at any time without notice. The existence of the Firm's

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retention policy, now or in the future, does not create any obligation on the part of the Firm to retain files after the completion of a matter unless a separate written agreement is made between the Firm and you for retention of certain files for some specified period of time. If you require retention of your files according to your own records retention policy or needs, please request the originals or copies of your files at any time during the course of any matter or upon its conclusion. If you request the Firm to transfer your files to you or to a third party, you will pay the Firm's charges for copying any portion of the files the Firm wishes to retain to the extent allowed under applicable law.

6. Board Service. Should one of our attorneys serve as a member of the Board of Directors or hold a similar position with you, he or she would serve in that role only in his or her individual capacity and not as a representative of, or in his or her capacity as, an attorney with the Firm. Any such service will not constitute the provision of legal services by such attorney, individually or on behalf of the Firm.

7. Arbitration of Disputes. Except as otherwise may be required by applicable Rules of Professional Conduct or law, any controversy or claim, whether in tort, contract or otherwise, arising out of or relating to the relationship between The Company, its affiliates or successors (the "Client Arbitration Parties") and the Firm, its affiliated partnerships, attorneys or staff or any of their successors (the "Firm Arbitration Parties") or the services provided or the fees charged by the Firm Arbitration Parties pursuant to this engagement letter or otherwise to the Client Arbitration Parties shall be submitted to binding arbitration. By agreeing to arbitrate, you are agreeing to waive your right to a jury trial. The arbitration will be conducted in accordance with this document, the Federal Arbitration Act and CPR Rules for Non-Administered Arbitration, as in effect on the date of this engagement letter. The arbitration shall be conducted before a panel of three neutral arbitrators. The arbitration shall be commenced and held in the city and state in which the Firm's office is located whose attorneys spent the most amount of time on the matter in dispute. Any issues concerning the location of the arbitration, the extent to which any dispute is subject to arbitration, the applicability, interpretation, or enforceability of this agreement shall be resolved by all of the arbitrators. All aspects of the arbitration shall be treated as confidential and neither the parties nor the arbitrators may disclose the content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. The result of the arbitration shall be binding on the parties and judgment on the arbitrators' award may be entered in any court having jurisdiction.

8. Limited Liability Partnership. The Firm is a limited liability partnership (LLP). Similar to the corporate form of business organization, the LLP form generally limits the liability of the individual partners of the Firm to the capital they have invested in the Firm for claims arising from services performed by the Firm. Our form of

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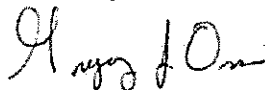
organization as an LLP will not diminish the ability to recover damages from the Firm or from any individuals who directly caused the loss.

9. Public Identification of Client. The Firm sometimes identifies clients in presentation to prospective clients or in various public communications, including press releases, our website, and other publications used to describe our Firm, our lawyers and our capabilities. In connection with and as a part of such communications, we sometimes describe in generic terms the nature of work done for particular clients. If you do not wish us to refer to you or your representation in this fashion, please notify us upon receipt of this letter. Otherwise, we will treat your retention of us as consent to reveal your name and, in generic terms, the nature of our work for you, as described above.

10. Entire Agreement and Miscellaneous. You and we understand that this letter constitutes the entire agreement pertaining to the engagement of the Firm, and that it shall not be modified by any policies, procedures, guidelines or correspondence from you or your representative or a referral organization unless agreed to in writing by the Firm. All parties signing this letter represent and warrant that they are fully authorized to enter into this agreement, and in the case of signatories agreeing on behalf of organizations, to bind the organization or organizations to the terms in this letter. Our relationship with you will be deemed concluded when we have completed our agreed-upon services.

If you are in agreement, please sign a copy of this letter in the space provided at the end of letter and return it to me via email or facsimile. If you have any questions about any of the provisions of this engagement letter, or if you would like to discuss possible modifications, do not hesitate to call me. Again, we are pleased to have this opportunity to serve you. We will commence work as soon as written acknowledgement of your acceptance is received.

Sincerely,



Mr. Gregory J. Ossi

GJO/jsl
Attachments

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Approval of Engagement

WESTMORELAND COAL COMPANY (“WESTMORELAND”) has read the enclosed letter and agrees to its terms, effective as of the date on which the Firm first provided services to Westmoreland.

By signing this letter, Westmoreland acknowledges that it has been afforded the full opportunity to review it and to seek the advice of independent counsel, and either has in fact consulted with such independent counsel or has chosen not to do so.

BY SIGNING THIS LETTER, WESTMORELAND AGREES TO HAVE ANY ISSUE ARISING OUT OF OR RELATING TO THE FIRM’S SERVICES (INCLUDING ANY CLAIM FOR PROFESSIONAL LIABILITY) DECIDED IN ARBITRATION AS SPECIFIED IN SECTION 9 ABOVE AND GIVES UP ITS RIGHT TO A JURY OR COURT TRIAL TO THE EXTENT PROVIDED THEREIN.

ACKNOWLEDGED and AGREED TO

this _____ day of _____, 2019.

WESTMORELAND COAL COMPANY

By: _____

Its: _____

CAO and CLO

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Statement on Charges for Ancillary Services

This schedule summarizes the manner in which the firm currently determines the amount billed to clients for ancillary services provided by the firm or obtained for the client from outside vendors. The amounts set forth in this schedule, like the rates of our lawyers, change from time to time.

| Expense Description | Basis of Charges | Current Charge | Client Billing Presentation |
|-----------------------------------|------------------|-------------------------|------------------------------|
| <u>MAIL/DELIVERY</u> | | | |
| Federal Express Delivery Services | Per Delivery | Invoice Amount | Federal Express |
| Other Express Delivery Services | Per Delivery | Invoice Amount | Express Delivery Service |
| Outside Delivery | Per Invoice | Invoice Amount | Delivery Service Charge |
| <u>COPIES</u> | | | |
| Network Copies | Per Page | \$.08 over 1000 copies | Network Print |
| | | \$.10 under 1000 copies | Network Print |
| Photocopy | Per Page | \$.15 | Duplicating |
| Color Copies | Per Page | \$1.00 | Duplicating - Color Copies |
| Document Binding | Per Booklet | Up to \$1.00 | Bindery |
| Photocopy (Outside Services) | Per Invoice | Invoice Amount | Outside Photocopying Service |
| <u>COMMUNICATIONS</u> | | | |
| Fax: | | | |
| Incoming | | No Charge | Fax Charges |
| Outgoing | Per Page | \$1.00 | |
| Postage | Destination | Amount Over \$2.00 | Postage |

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| Expense Description | Basis of Charges | Current Charge | Client Billing Presentation |
|--|------------------|--|---------------------------------|
| <u>RESEARCH/DATA MANAGEMENT</u> | | | |
| Lexis/Nexis & Westlaw Online Data Bases | Per Hour/Search | Published Rates less 50% | Computer Assisted Research |
| Other Online Usage (Dialog etc.) | Per Hour/Search | Information Cost | Computer Assisted Research |
| Computer Usage (Litigation Support) | Per Hour | \$115.00/\$185.00 | Database Service |
| Reports, Searches, Certificates | Per Invoice | Invoice Amount | Searches |
| Filing, Recordation Fees | Per Invoice | Invoice Amount | Filing/Other Fees |
| Depositions, Transcripts, Service of Process | Per Invoice | Invoice Amount | Depos., Transc., Service |
| Computer Tax Preparation | Per Return | \$50.00 | Computax |
| <u>TRAVEL</u> | | | |
| Travel — Non Auto | Per Invoice | Invoice Amount | Travel Expense |
| Auto: | | | |
| Personal or Firm | Per Actual Mile | Rate established by the IRS from time to time | Mileage |
| Rental | Per Invoice | Invoice Amount | Auto Rental |
| <u>OTHER</u> | | | |
| Staff Overtime | Per Hour | \$39.00 | Non-Atty OT |
| | Transportation | Actual Charge | Transportation |
| Outside Professional Services | Per Invoice | Invoice Amount | Consultant Fees & Exp. |
| Minute Books | Per Book | Invoice Amount | Corporate Supplies |
| Other Misc. Cash Costs as incurred on behalf of the client | Per Invoice | Invoice Amount | Other Miscellaneous Expenses |

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February 1, 2018

Statement on Charges for Legal Services

The firm's goal is to provide its clients with legal services of high quality, rendered promptly and responsively to each client's needs and in an economical manner. In return, clients are expected to pay the firm's charges for such professional services and for other charges and disbursements in connection with such services promptly upon receipt of statements therefor. The purpose of this memorandum is to set forth the basis upon which the firm bills clients for legal services and charges relating thereto, and the terms on which such statements are rendered. Clients of the firm are expected to pay the firm's statements in accordance with the provisions of this statement, unless different arrangements are set forth in an engagement letter signed by the firm. This statement is delivered to clients in compliance with applicable requirements of the Rules of Professional Conduct as in effect in certain jurisdictions in which attorneys of the firm are admitted to practice law.

1. THE BASIS FOR FEES. In most cases, the firm's fees are determined with reference to the time expended on the matter by partners, associates, legal assistants and other staff members recording time on specific matters, in each case at hourly rates established in relation to the experience and skills of the person performing the work. When the size, complexity, difficulty or urgency of a matter, or the result obtained, or similar factors so dictate, our fee may include an additional amount deemed by the firm to be reasonable in light of such factors. The firm's hourly rates are revised periodically to reflect increased skills, costs, and other factors. Clients may obtain information about the range of the rates currently in effect from the attorney in charge of the matter.

For some matters a billing arrangement determined without reference to time can be made. The attorney responsible for the matter in the firm will discuss any such specialized basis for billing with the client on a case-by-case basis. Any such arrangements will be confirmed in writing.

2. ADVANCES ON FEES, OTHER CHARGES AND DISBURSEMENTS. For new clients of the firm, and in certain other cases in which it is deemed appropriate, the firm's policy is to require an advance payment to be applied against the cost of legal services and other charges and disbursements expected to be rendered and incurred. Unless other arrangements are made, the amount advanced will be held by the firm and either held for application to the last statement rendered on the matter or applied against the firm's monthly statements; the client will be billed on a monthly basis to restore the

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advance to the amount originally posted. The advance will be applied in the manner provided in the engagement letter to which this statement is attached. If the project is concluded or terminated (or at such earlier date as the firm deems appropriate, or as is otherwise agreed at the time of the advance), any portion of the advance not applied by the firm to its fees, other charges and disbursements in respect of services performed prior to such conclusion or termination or such earlier date will be refunded. The firm does not segregate advances received from clients and, absent special arrangements, no interest will be paid to clients on such advances.

3. OTHER CHARGES AND DISBURSEMENTS. Clients are billed various charges for ancillary services, including long distance telephone, photocopying, messenger service, computerized research and database management, mailing, outgoing facsimile transmissions, express delivery, overtime secretarial charges specifically related to the matter, and other expenses. To reflect costs associated with providing telephone and computerized research services, we bill clients an amount in excess of our direct out-of-pocket expenses for such services. A summary of the manner in which we currently bill for ancillary services can be obtained from the attorney in charge of the matter. In addition, the firm bills clients for disbursements incurred by the firm on the client's behalf. By way of example, disbursements typically include travel expenses, court stenographer's fees, filing and other fees, and bills rendered to the firm by third-party providers of services. Bills for these charges are often transmitted directly to the client for payment and it is expected that these bills will be paid by the client upon receipt.

4. FREQUENCY OF BILLING. Statements for services, other charges and disbursements are generally rendered monthly. However, in certain matters of a transactional nature, the firm may render a statement upon the completion of the transaction or, if the transaction is not completed, at the time work is completed.

5. PAYMENT TERMS. All statements in respect of professional fees, other charges and disbursements are due upon receipt and the firm expects payment in not more than thirty days. The firm's fees do not include any factor for delayed payment by clients, but the firm may impose such a charge in respect of any statement unpaid for more than forty-five days. The firm reserves the right to terminate its services if statements are not paid promptly.