

**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)
)	

**DECLARATION OF MARC D. PUNTUS
IN SUPPORT OF CONFIRMATION OF THE
AMENDED JOINT CHAPTER 11 PLAN OF WESTMORELAND
COAL COMPANY AND CERTAIN OF ITS DEBTOR AFFILIATES**

I, Marc D. Puntus, hereby declare under penalty of perjury as follows:

1. I am a Partner of Centerview Partners LLC (“Centerview”), an investment banking firm which has its principal office at 31 West 52nd Street, New York, New York 10019. I am over the age of 18 and authorized to submit this declaration (the “Declaration”) in support of confirmation of the *Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (as may be amended, modified, or supplemented from time to time, the “Plan”).²

2. Except where specifically noted, the statements in this Declaration are based on my personal knowledge, belief, or opinion; information that I have received from the WLB Debtors’ employees or advisors and/or employees of Centerview working directly with me or under my supervision, direction, or control; or from the WLB Debtors’ records maintained

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 not defined herein shall have the meanings ascribed to them in the Plan.

in the ordinary course of their business. As a professional retained by the WLB Debtors,³ Centerview is charging for services provided in this matter, including certain fees for sale transactions, but I am not being specifically compensated for providing this Declaration or testimony. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am authorized to submit this Declaration on behalf of the WLB Debtors.

Qualifications

3. I am a Partner and co-head of the Debt Advisory and Restructuring Group of Centerview. Centerview is a full-service independent investment banking firm providing financial advisory services, including mergers and acquisitions, debt financing, and restructuring advice, across a broad range of industries. Centerview and its senior professionals have extensive experience in the reorganization, restructuring, and sale of distressed companies, both out-of-court and in chapter 11 proceedings.

4. I have over 25 years of experience advising and executing financing and restructuring transactions and distressed and regular-way mergers and acquisitions, including section 363 and chapter 11 plan sales. My experience includes representing companies, boards, creditors, and shareholders in a variety of situations. Consequently, in my current role, I am responsible for tracking and staying current on market trends for asset sales in and outside of bankruptcy. Prior to joining Centerview, I was a co-founder of, and served as a managing director at Miller Buckfire & Co. and served in the financial restructuring group of Dresdner Kleinwort Wasserstein. Prior to entering the financial services industry, I was a Partner in the Business,

³ On November 14, 2018, the Bankruptcy Court entered the *Order Authorizing the Retention and Employment of Centerview Partners LLC as Financial Advisor and Investment Banker for the Debtors and Debtors In Possession Effective Nunc Pro Tunc to the Petition Date* [Docket No. 494].

Finance, and Restructuring department of Weil, Gotshal & Manges LLP. I graduated from Georgetown University with a B.S.B.A./Finance and Boston University School of Law with a J.D.

I. The WLB Debtors' Assets.

5. For a number of reasons, including the extremely challenging thermal coal market environment, the unique risks inherent in the WLB Debtors' "mine mouth" operating model, and the WLB Debtors' significant legacy liabilities and secured indebtedness, the WLB Debtors retained Centerview in February 2018 to assist in evaluating potential restructuring alternatives. Centerview advised and assisted the WLB Debtors in several capacities, including the development of both a prepetition and postpetition marketing process for the WLB Debtors' assets.

6. In the months leading up to the Petition Date, the WLB Debtors and their secured creditors identified certain assets that for various strategic and operational reasons were not considered critical to the go-forward core business operations of the WLB Debtors and/or did not provide significant value to the WLB Debtors (*i.e.*, the Non-Core Assets). The Non-Core Assets initially included four active mining operations (Absaloka, Buckingham, Beulah, and Savage), one reclamation-only project (Jewett), and one permitted, but not active, mine (Haystack). The remaining assets (*i.e.*, the Core Assets) initially included two U.S. mining assets (Colstrip and San Juan), 100 percent of the equity in the WLB Debtors' Canadian subsidiaries, certain cash and cash equivalents, as well as commercial tort and investment arbitration claims. In December 2018, after further analysis and discussions, the WLB Debtors and their secured creditors decided to also include the Absaloka and Haystack mines in the Core Assets (*i.e.*, those two assets are no longer considered Non-Core Assets).

II. The WLB Debtors' Prepetition Marketing Process of the Non-Core Assets.

7. Centerview began formally marketing the Non-Core Assets for sale in August 2018 (the "Non-Core Asset Marketing Process"). As part of the Non-Core Asset Marketing Process, Centerview contacted thirty-seven parties, including five financial buyers and thirty-two strategic buyers. Fifteen parties executed non-disclosure agreements ("NDAs"), received a Confidential Information Memorandum ("CIM"), were offered access to a virtual data room, and were offered the opportunity to participate in site visits.

8. Centerview asked interested parties to submit bids for the Non-Core Assets by October 17, 2018 (the "Non-Core Bid Deadline"). Importantly, notwithstanding such deadline, Centerview continued to engage with any party interested in purchasing any of the WLB Debtors' Non-Core Assets after the Non-Core Bid Deadline and through the date of this Declaration. On, or shortly after, the Non-Core Bid Deadline, Centerview received four non-binding proposals with respect to certain of the Non-Core Assets. Two of the proposals (the "Operator Bids") with respect to the Non-Core Assets contemplated bids to operate the assets for a management fee, without owning them or assuming any related liabilities. The remaining two non-binding proposals with respect to certain of the Non-Core Assets assumed a transfer of ownership of the assets. One such proposal was made by Merida Natural Resources, LLC ("Merida") and contemplated the purchase of Absaloka, Beulah, Savage, Jewett and Haystack for zero consideration and without assumption of significant liabilities, except for reclamation liabilities. The second bid received for the Non-Core Assets was from CCU Coal and Construction, LLC ("CCU"), who bid \$1 million to acquire the Buckingham Mine in a section 363 sale free and clear of existing liabilities, except for reclamation liabilities.

9. Given the uncertainty associated with the ultimate outcome of the Non-Core Asset Marketing Process and the WLB Debtors' desire to achieve a comprehensive transaction providing a solution for all of its mining operations, the WLB Debtors and Centerview negotiated with the Stalking Horse Purchaser that it would accept any of the Non-Core Assets to the extent a third party has not agreed, prior to the Plan Effective Date, to acquire such Non-Core Assets. Ultimately, the WLB Debtors and the Consenting Stakeholders executed the RSA, pursuant to which an entity affiliated with the Consenting Stakeholders would serve as the Stalking Horse Purchaser and submit a credit bid in the amount of approximately \$390 million plus assumption of the \$110 million DIP Facility (*i.e.*, \$500 million total consideration) for the Core Assets (the "Stalking Horse Bid"). Although the Stalking Horse Bid is only for the Core Assets, the bid provides a solution for substantially all of the WLB Debtors' assets, because the Stalking Horse Purchase Agreement includes an agreement by the Stalking Horse Purchaser to also accept any of the Non-Core Assets (free and clear of all liabilities not expressly described in the RSA) to the extent a third party has not agreed, prior to the Plan Effective Date, to acquire such Non-Core Assets. The Stalking Horse Bid would be subject to higher and better bids following further market-testing of the Stalking Horse Bid through the Auction.

III. The WLB Debtors' Postpetition Marketing Process.

(a) The WLB Debtors' Continuation of the Non-Core Marketing Process.

10. Following the Petition Date, Centerview continued the Non-Core Marketing Process. In mid-December, the WLB Debtors and Centerview identified a potential sale of the Buckingham Mine, which is located in Ohio, for \$1 million in cash to CCU, an affiliate of Charles Ungorean (Oxford Mining Company, LLC's former chief executive and president, and a former member of Westmoreland Resources GP, LLC's board of directors). As part of the contemplated

agreement with CCU, an option was included for the Oxford Acquirer⁴ to “put” all of the assets of Debtor Oxford Mining Company, LLC and the assets of each of its subsidiaries other than the assets of Debtor Westmoreland Kemmerer Fee Coal Holdings, LLC (Debtor Oxford Mining Company, LLC and each of its subsidiaries other than Debtor Westmoreland Kemmerer Fee Coal Holdings, LLC are referred to herein as the “Oxford Sellers”) (including certain executory contracts and unexpired leases) (the “Oxford Assets”) to CCU for a price of up to \$20 million (the “Oxford Option”). The Oxford Option allowed the marketing process for the Oxford Assets (which process was run by Lazard Freres & Co., LLC on behalf of the WMLP Debtors) to continue while creating a floor of negative \$20 million for their market value. I understand that the WLB Debtors thereafter sought approval of that proposed transaction.⁵

11. The WLB Debtors’ agreement with CCU unlocked significant value for both the WLB Debtors’ and WMLP Debtors’ estates because it resulted, prior to a hearing on the Original Buckingham Sale Motion, in the estates receiving a new, combined bid from Merida for the Buckingham Mine *and* the Oxford Assets, on terms far superior to the original CCU proposal. Among other things, the Merida bid provided \$250,000 in additional cash consideration for the Buckingham Mine and contemplated the acquisition of the Oxford Assets for \$0 at closing, except for the assumption of existing surety bond collateral.

12. After receiving this new bid from Merida, the WLB Debtors and WMLP Debtors engaged in additional discussions with Merida and CCU to ensure they received the highest and best bid for the Buckingham Mine and the Oxford Assets. Following several rounds of competing

⁴ As defined in the *WLB Debtors’ Motion for Entry of an Order Approving the Sale of the Buckingham Mine to CCU Coal and Construction, LLC Free and Clear of Liens, Claims, Encumbrances, and Interest* [Docket No. 875] (the “Original Buckingham Sale Motion”).

⁵ See the Original Buckingham Sale Motion.

proposals by Merida and CCU, the Debtors selected Merida as the stalking horse bidder for the Buckingham Mine and the Oxford Assets.

13. The proposed Merida stalking horse bid transaction provided a path to resolve a significant matter that implicated both estates and facilitate a prompt resolution of these cases. As a result, the WLB Debtors and the WMLP Debtors, in consultation with their respective stakeholders, decided to pursue the combined bid, subject to a competitive auction process. That process culminated in a live auction on February 1, 2019, where CCU was declared the winning bidder for the Buckingham Mine for a purchase price of \$1.8 million in cash, with an assumption of \$800,000 of trade payables (an improvement of \$1.6 million from CCU's original bid), and the Oxford Assets for zero cash consideration at closing except for the assumption of existing surety bond collateral. I understand that on February 5, 2019, the Court entered an order approving the joint sale,⁶ and on February 11, 2019, the sale closed.⁷

14. In relation to the remaining Non-Core Assets (which are comprised of the Beulah, Savage, and Jewett mines), the WLB Debtors did not receive any Qualified Bids,⁸ but have continued discussions with Merida regarding a potential purchase of the three remaining Non-Core Assets.

15. Accordingly, the remaining Non-Core Assets will be acquired by the Stalking Horse Purchaser in accordance with the terms set forth in the RSA and the Bidding Procedures Order, as described in further detail below.

⁶ See *Order Approving Joint Expedited Motion of the WLB Debtors and the WMLP Debtors for Entry of an Order (I) Approving the Sale of (A) Substantially All of the Assets of Oxford Mining Company, LLC, and Certain of Its Subsidiaries and (B) the Buckingham Mine, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith and (III) Granting Related Relief, Including Approval of the Related Sale Process* [Docket No. 1289].

⁷ See *Notice of Occurrence of Closing of Sales of the Buckingham Mine and the Oxford Assets* [Docket No. 1351].

⁸ As defined in the Bidding Procedures Motion (as defined herein).

(b) The WLB Debtors' Postpetition Core Asset Marketing Process.

16. In late October 2018, Centerview began its marketing process for the Core Assets (the "Core Asset Marketing Process"). As part of the Core Asset Marketing Process, Centerview contacted forty-five parties, including thirty-three strategic buyers and twelve financial buyers. Thirteen parties executed NDAs or had previously executed NDAs as part of the Non-Core Asset Marketing Process, received a CIM, were offered access to a virtual data room, and were offered the opportunity to participate in site visits.

17. I understand that on October 18, 2018, the WLB Debtors filed the *Motion of Westmoreland Coal Company and Certain of its Subsidiaries for Entry of an Order (I) Authorizing Westmoreland Coal Company and Certain Debtor Affiliates to Enter into and Perform Under the Stalking Horse Purchase Agreement, (II) Approving Bidding Procedures With Respect to Substantially All Assets, (III) Approving Contract Assumption and Assignment Procedures, (IV) Scheduling Bid Deadlines and an Auction, (V) Scheduling Hearings and Objection Deadlines With Respect to the Disclosure Statement and Plan Confirmation, and (VI) Approving the Form and Manner of Notice Thereof* [Docket No. 208] (the "Bidding Procedures Motion"), which outlined the key terms of the Stalking Horse Purchase Agreement. Although the Stalking Horse Bid is only for the Core Assets, the bid provides a solution for substantially all of the WLB Debtors' assets, because the Stalking Horse Purchase Agreement includes an agreement by the Stalking Horse Purchaser to also accept any of the Non-Core Assets (free and clear of all liabilities not expressly described in the RSA) to the extent a third party has not agreed, prior to the effective date of the Plan, to acquire such Non-Core Assets.

18. I understand that on November 15, 2018, this Court entered the Bidding Procedures Order. As outlined in the Bidding Procedures Order, interested parties could submit bids for all

of the Core Assets and Non-Core Assets, excluding any Non-Core Assets sold prior to the Auction, individual Core Assets and/or Non-Core Assets, or any combinations thereof. Qualified Bids for the Core Assets were due on January 15, 2019, at 5:00 P.M. (prevailing Eastern Time) (the “Bid Deadline”) and the Auction for all or substantially all of the WLB Debtors’ assets was scheduled for January 22, 2019, at 10:00 A.M. (prevailing Eastern Time), if any other Qualified Bids were received.

19. As indicated above, thirteen parties executed NDAs in connection with the Core Asset Marketing Process or had previously executed NDAs as part of the Non-Core Asset Marketing Process. Although four such parties completed site visits with respect to the Core Assets, the WLB Debtors did not receive any Qualified Bids for the Core Assets by the Bid Deadline. The WLB Debtors did receive one non-qualified bid for one of the Core Assets, the Absaloka mine, but the WLB Debtors determined that this bid was not a Qualified Bid, and decided not to pursue such transaction after consulting with the Consenting Stakeholders. Additionally, the WLB Debtors received an indication of interest to acquire all of the WLB Debtors’ Core Assets from another party prior to the Bid Deadline. That party subsequently also submitted a markup of the Stalking Horse Purchase Agreement. While this party did not submit a formal proposal prior to the Bid Deadline, the indication of interest, in and of itself, did not represent a Qualified Bid as it did not include committed financing, among other requirements of the Bidding Procedures Order.

IV. The Stalking Horse Bid is the Highest and Best Offer.

20. No Qualified Bids were received for the WLB Debtors' Core Assets outside of the Stalking Horse Bid, and accordingly, on January 21, 2019, the WLB Debtors announced the cancellation of the Auction.⁹ After months of prepetition and postpetition marketing processes, the WLB Debtors determined, in consultation with their professionals, that the Stalking Horse Bid is the highest and the best bid for the WLB Debtors' Core Assets and Non-Core Assets. With the exception of the Buckingham Mine, which was sold to CCU, pursuant to the Stalking Horse Purchase Agreement, the WLB Debtors will sell all of the WLB Debtors' remaining mines to the Stalking Horse Purchaser "free and clear" of claims, liens, encumbrances, and other interests. The Stalking Horse Purchaser will assume and acquire all asset retirement obligations associated with the Transferred Assets.

21. At this juncture, the only avenue for avoiding a piecemeal value-destructive liquidation of the WLB Debtors' Estates is through a sale of the WLB Debtors' operating assets as a going concern to the Stalking Horse Purchaser. Accordingly, I believe that the Stalking Horse Bid is the best and highest offer for the WLB Debtors' assets, and maximizes the value of the WLB Debtors' Estates for the benefit of all creditors and stakeholders.

[Remainder of page intentionally left blank.]

⁹ See Notice of Cancellation of Auction and Designation of Successful Bidder [Docket No. 1112].

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: February 22, 2019

/s/ Marc D. Puntus

Marc D. Puntus

Partner

Centerview Partners LLC