UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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

DECLARATION OF JEFFREY S. STEIN IN SUPPORT OF CONFIRMATION OF THE AMENDED JOINT CHAPTER 11 PLAN OF WESTMORELAND COAL COMPANY AND CERTAIN OF ITS DEBTOR AFFILIATES

I, Jeffrey S. Stein, hereby declare, under penalty of perjury, as follows:

1. Since August 9, 2016, I have served as a member of the Board of Directors of Westmoreland Coal Company ("WLB"), one of the above-captioned debtors and debtors-in-possession (together with WLB, collectively, the "Debtors").[2] I submit this declaration (the "Declaration") in support of the *WLB Debtors' (I) Memorandum of Law in Support of Confirmation of Debtors' Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates and (II) Response to Certain Objections Thereto* (the "Confirmation Brief"), filed contemporaneously herewith, and in support of approval of the 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").

[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 or the Confirmation Brief (each as defined herein), as applicable.

2. On August 16, 2017, I was appointed by the Board of Directors of WLB as Chief Investment Officer to help lead shareholder value initiatives. On April 27, 2018, I was appointed by the Board of Directors of WLB as Chief Restructuring Officer to evaluate restructuring and refinancing alternatives regarding WLB and its subsidiaries. In my capacity as Chief Restructuring Officer, I am familiar with the WLB Debtors' day-to-day operations, business and financial affairs, and books and records, as well as the WLB Debtors' restructuring efforts.

3. I have played an active role in the development of the Plan and I am familiar with the Plan's terms, as well as the negotiations that led to its development. In addition, I am the Managing Partner of Stein Advisors LLC, a financial advisory firm that provides consulting services to institutional investors focused on distressed debt and special situations equity investments. Prior to founding Stein Advisors LLC in 2010, from January 2003 through December 2009, I served as Principal of Durham Asset Management LLC, a global event-driven distressed debt and special situations equity asset management firm that I co-founded. In that capacity, I was responsible for the identification, evaluation and management of investments for various investment portfolios. From July 1997 to December 2002, I served as Co-Director of Research at The Delaware Bay Company, Inc., a boutique research and investment banking firm focused on the distressed debt and special situations equity asset classes. From September 1991 to August 1995, I was an Associate and Assistant Vice President at Shearson Lehman Brothers in the Capital Preservation and Restructuring Group. I received a B.A. in Economics from Brandeis University and an M.B.A. with Honors in Finance and Accounting from New York University.

4. Except as otherwise indicated herein, all facts set forth in this declaration are based upon my personal knowledge of the WLB Debtors' operations and finances and the WLB Debtors' restructuring activities, information gathered from my review of relevant documents, and

information that other members of the WLB Debtors' management and advisors supplied to me. I am over the age of 18 and authorized to submit this declaration in support of the Plan. If called upon to testify, I could and would competently testify to the facts and opinions set forth herein.

The Plan

I. Background.

5. Prior to the Petition Date, the WLB Debtors suffered substantially decreased margins and cash flows due to, among other things, the precipitous decline in the coal market, lack of growth in energy demand generally, and a stricter regulatory environment. In an attempt to maintain their viability, the WLB Debtors took several steps to effectuate a restructuring in a holistic manner. After over six months of extensive negotiations with the Ad Hoc Group, the WLB Debtors obtained a framework to achieve this objective: a $110 million bridge loan facility from the Ad Hoc Group to fund the WLB Debtors' restructuring, which provided the WLB Debtors the necessary liquidity to remain out of bankruptcy and negotiate the terms of a holistic, consensual restructuring and ultimately led to the RSA, the Stalking Horse Purchase Agreement, and the Plan.

A. The Bridge Loan Facility and Restructuring Support Agreement.

6. In April 2018, the WLB Debtors determined that additional liquidity was required on an expedited basis to avoid a liquidation. The WLB Debtors engaged in countless negotiations and worked tirelessly to secure additional financing, including extended negotiations with the WLB Debtors' existing stakeholders. The WLB Debtors engaged extensively with the Ad Hoc Group and CIBC, the administrative agent under the WLB Debtors' then-existing revolving credit facility. In addition, with the assistance of Centerview Partners LLC, the WLB Debtors engaged in discussions with a number of third-party financial institutions regarding providing DIP financing. Unfortunately, no prospective third-party lender would participate, underwrite, or arrange an adequate postpetition financing facility (even on a priming basis).

7. As a result, the WLB Debtors and their advisors engaged with the Ad Hoc Group and CIBC regarding the terms of postpetition financing. This highly competitive process—which resulted in multiple proposals being exchanged with each party as well as a combined proposal involving both parties—ultimately led to the WLB Debtors' entry into a $110 million Bridge Loan provided by the Ad Hoc Group on May 21, 2018.

8. Thereafter, the WLB Debtors utilized their runway to negotiate a consensual restructuring transaction with the Ad Hoc Group. Those efforts culminated in the RSA, which the WLB Debtors and the Ad Hoc Group entered into on October 9, 2018.

9. The RSA contemplated a holistic restructuring supported by the Ad Hoc Group that serves as the catalyst for the WLB Debtors' Plan, which would transfer substantially all of the WLB Debtors' assets and operations to the Stalking Horse Purchaser, a new entity created by the Ad Hoc Group, preserving operations and over a thousand jobs. Specifically, pursuant to the Restructuring Support Agreement, the Stalking Horse Bidder submitted a credit bid for the WLB Debtors' Core Assets and agreed to accept any of the Non-Core Assets to the extent a third party had not agreed, prior to the Plan Effective Date, to acquire such Non-Core Assets (the "Stalking Horse Bid"), thus ensuring that all of the WLB Debtors' mines have an operator and party responsible to address all asset retirement obligations ("ARO"). Indeed, certain of these mines are no longer active and instead have only ARO that the Purchaser is obligating itself to complete. Additionally, pursuant to the Restructuring Support Agreement, the Ad Hoc Group agreed that the Stalking Horse Bidder and/or the underlying secured creditors would: (a) vote to support the Plan; (b) pay for certain Funded Liabilities; (c) assume two pension plans covered by the Pension

Benefit Guaranty Corporation (as frozen);[3] (d) pay tens of millions of dollars in critical trade payments; (e) support the Debtors' efforts to secure agreed-upon modifications of collective bargaining agreements and retiree medical issues, which ultimately led to consensual resolutions with the International Union of Operating Engineers; and (f) propose to fund a retiree medical settlement for retirees of the Heritage, Kemmerer, and Beulah mines (for which the Ad Hoc Group has agreed to support a $6 million payment by the Debtors).

B. Commencement of the Chapter 11 Cases.

10. As discussed, following months of good-faith, arm's-length discussions with their secured creditors, the WLB Debtors commenced these chapter 11 cases to effectuate a restructuring with the support of the Consenting Stakeholders on the terms set forth in the RSA.

C. The Committee Settlement.

11. On October 18, 2018, the United States Trustee appointed the Committee. Thereafter, the Committee commenced an investigation into the prepetition liens of First Lien Claimants, several categories of assets of uncertain value that are excluded from the prepetition liens of Holders of First Lien Claims and the Committee asserted were unencumbered, and potential claims arising in connection with various prepetition transactions entered into by the WLB Debtors. Over the course of the next two months, and in response to multiple Bankruptcy Rule 2004 discovery requests from the Committee, the WLB Debtors produced more than 22,000 documents and hundreds of the WLB Debtors' coal leases. On January 4, 2019, the Committee deposed corporate representatives of the WLB Debtors and the Required Consenting Stakeholders.

[3] Subsequent to the execution of the Restructuring Support Agreement, the Ad Hoc Group agreed that the Purchaser would assume a third pension plan (as frozen).

12. Following weeks of extensive negotiations between the WLB Debtors, the Required Consenting Stakeholders, and the Committee, the WLB Debtors and the Committee ultimately reached the Committee Settlement on January 22, 2019.[4] More specifically, as the result of the Committee Settlement, the Plan was amended to provide for:[5]

- the waiver of any distribution on account of the First Lien Deficiency Claims;
- the assumption by the Stalking Horse Bidder of the Westmoreland Elkol-Sorenson Mine pension plan (as frozen);
- the payment of unpaid amounts authorized for payment under certain of the WLB Debtors' first day orders,[6] subject to the DIP Order; and
- the agreement by the WLB Debtors and the Required Consenting Stakeholders not to propose or support any settlement of 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] that specifically provides for the allowance of a General Unsecured Claim payable from the $3.25 million Committee Settlement Amount.

13. On January 24, 2019, the Committee filed a *Statement of the Official Committee of Unsecured Creditors in Support of Confirmation of the Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* [Docket No. 1140], wherein the Committee explained that it "supports confirmation of an Amended Plan reflecting the terms of the Settlement

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[4] *See 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* [Docket No. 1115] (the "Second Stipulation").

[5] The terms described herein are for information purposes only and are qualified in their entirety by the terms of the Committee Settlement set forth in the Committee Settlement Term Sheet, attached as Exhibit A to the Second Stipulation.

[6] *See Final Order (I) Authorizing the Payment of Specified Trade Claims and Outstanding Orders, and (II) Confirming Administrative Expense Priority of Outstanding Orders* [Docket No. 512] and *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* [Docket No. 510].

Term Sheet." The WLB Debtors subsequently amended the Plan to reflect the terms of the Committee Settlement.

14. The Committee Settlement resolves lengthy, costly, and uncertain litigation that would have otherwise been prosecuted by the Committee, which would have generated substantial administrative costs, and would have presented substantial risks of significantly reduced creditor recoveries. Therefore, the WLB Debtors believe that the Committee Settlement is in the best interests of the WLB Debtors, the Estates, and all parties in interest, and that the Court should approve the Committee Settlement.

D. The WMLP Settlement.

15. WLB holds a 94 percent limited partner ownership interest in WMLP and 100 percent of the equity interests of WMGP, which, in turn, owns 0.164 percent of WMLP.

16. The board of directors of WMLP has appointed the Conflicts Committee to address potential conflicts of interest between WMLP and WMGP, as circumstances warrant. The Conflicts Committee consists solely of independent directors and has separate legal and financial advisors from WMLP.

17. Given this separation, the WMLP Debtors have been conducting their own marketing and sale process for their assets, separate from the WLB Sale Transaction (as defined in the Confirmation Brief). Prior to the Petition Date, the WMLP Debtors engaged various professionals to assist in the exploration and analysis of strategic alternatives, including Lazard. With Lazard's assistance, the WMLP Debtors developed and negotiated with WMLP's term loan lenders and WLB a sale protocol for the WMLP Debtors' assets, which was finalized in June 2018.

18. Pursuant to the sale protocol, and an extensive prepetition and postpetition marketing process, the WMLP Debtors were ultimately successful in effectuating the sales of the Kemmerer Assets and the Oxford Assets (the "MLP Sales"). The MLP Sales are key achievements

in the WMLP Debtors' chapter 11 cases, and provide valuable consideration for the benefit of the WMLP Debtors' stakeholders while also offloading from the Debtors' collective estates burdensome asset retirement obligations that otherwise may have derailed the ability of both the WMLP Debtors and WLB Debtors to consummate their contemplated restructurings. These sales alone, however, were insufficient to resolve all outstanding intercompany issues between the WLB Debtors and the WMLP Debtors prior to the Confirmation Hearing. As further discussed in the Intercompany Settlement Motion, there are numerous intercompany relationships between the WLB Debtors and the WMLP Debtors, including: (a) the WLB Debtors provide all personnel and management services necessary for the WMLP Debtors' operations; (b) WLB is the employer under the United Mine Workers of America collective bargaining agreement with respect to the employees who work at the WMLP Debtors' assets; and (c) the WLB Debtors provide back-office support, including enterprise-wide insurance coverage, health and benefits coverage, and compensation administration for the employees who work at the WMLP Debtors' assets.

19. Following months of good faith, arm's-length discussions between the WLB Debtors, the WMLP Debtors, the WLB Secured Lenders (as defined in the Intercompany Settlement Motion), and the MLP Secured Lenders (as defined in the Intercompany Settlement Motion), the parties have agreed, subject to Court approval, to resolve all disputes between the estates (collectively, the "Intercompany Settlement") on the terms set forth in the Intercompany Settlement Term Sheet. The Intercompany Settlement Term Sheet represents a significant achievement for these cases that will facilitate confirmation of the WLB Debtors' chapter 11 plan, resolve potentially costly and distracting litigation regarding the estates' relative responsibilities regarding the now-transferred Oxford mining complex in Ohio, and provide certainty to the market regarding the extent of the WLB Debtors' support for the Kemmerer sale process.

20. The Debtors are seeking entry of an order from the Bankruptcy Court authorizing the Debtors' entry into the Intercompany Settlement Term Sheet, the Intercompany Settlement Motion, and approving the Intercompany Settlement on February 26, 2019, in conjunction with confirmation of the Plan.

E. The WLB Sale Transaction.

21. As was mentioned above, in the RSA, the Consenting Stakeholders agreed to provide the Stalking Horse Bid for certain of the WLB Debtors' assets, in the form of a credit bid of their secured debt, as contemplated in the Stalking Horse Purchase Agreement. The WLB Debtors determined in the exercise of their business judgment to maximize stakeholder value by market-testing the Stalking Horse Bid through an auction process and seeking to expeditiously sell the assets to the highest or otherwise best bidder pursuant to the Plan.

22. I understand from the WLB Debtors' other professionals that as of the bid deadline set forth in the Bidding Procedures Order of January 15, 2019, the WLB Debtors had only received one Qualified Bid (as defined in the Bidding Procedures Order) for the Core Assets: the original bid submitted by the Stalking Horse Purchaser. Accordingly, on January 21, 2019, the WLB Debtors filed the *Notice of Cancellation of Auction and Designation of Successful Bidder* [Docket No. 1112] and canceled the Auction with respect to the Core Assets. The WLB Debtors believe that the sale to the Stalking Horse Purchaser represents and provides the highest and best value for the WLB Debtors' Estates. The WLB Debtors complied with the Bankruptcy Code and the Bankruptcy Court-approved sale procedures in effectuating the Sale Transaction.

23. On December 18, 2018, the Bankruptcy Court entered the Disclosure Statement Order, which, among other things, approved the Disclosure Statement and established procedures for soliciting votes on the Plan. As required by section 1126 of the Bankruptcy Code, the WLB Debtors solicited votes from the Holders of Claims in Classes 3 and 4 (collectively, the "Voting

Classes"), with all other Classes of Claims and Interests being deemed to either accept or reject the Plan, as applicable, pursuant to sections 1126(f) and 1126(g) of the Bankruptcy Code.

24. In light of the foregoing, the Plan is the product of extensive good-faith, arm's-length negotiations between the WLB Debtors and all major stakeholder constituencies. The Plan is premised on a sale of substantially all of the WLB Debtors' assets, which will maximize value for the Estates and, in turn, the WLB Debtors' stakeholders.

25. The Plan resolves certain Claims and Causes of Action that the WLB Debtors, their stakeholders, and their advisors have thoroughly analyzed. Pursuit of the resolved Claims and Causes of Action would be highly uncertain to succeed and would introduce extensive delay, cost, and uncertainty in these Chapter 11 Cases. The resolution and settlement of these Claims and Causes of Action set forth in the Plan are critical to bringing closure to the WLB Debtors and all parties in interest for the matters addressed therein and permits the maximum recovery available for all creditor constituents.

II. The Plan Satisfies the Bankruptcy Code's Requirements for Confirmation.

26. It is my understanding that the Bankruptcy Code sets forth certain requirements that any chapter 11 plan must comply with in order to be confirmed. For the reasons detailed below and with the assistance of the WLB Debtors' advisors, I believe that the Plan satisfies the applicable Bankruptcy Code requirements for confirming a chapter 11 plan. The reasons for this belief are set forth herein, except where such compliance is apparent on the face of the Plan, the Plan Supplement, or related documents, or where such reasons will be the subject of other testimony or evidence introduced at the Confirmation Hearing.

A. The Plan Fully Complies with the Applicable Provisions of the Bankruptcy Code — § 1129(a)(1).

27. I understand that section 1129(a)(1) of the Bankruptcy Code requires a chapter 11 plan to comply with all applicable provisions of the Bankruptcy Code.

1. Proper Classification of Claims and Interests — § 1122.

28. I understand that section 1122 of the Bankruptcy Code states that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." I understand that "substantially similar" does not require similar claims be grouped together but merely that the class be homogenous.

29. I believe that each of the Claims and Interests in each particular Class are substantially similar to the other Claims and Interests in such Class. Article III.A of the Plan provides for the following Classes: Class 1 (Other Priority Claims); Class 2 (Other Secured Claims); Class 3 (First Lien Secured Claims); Class 4 (General Unsecured Claims); Class 5 (WLB Intercompany Claims); Class 6 (WLB Intercompany Interests); Class 7 (Section 510(b) Claims); and Class 8 (WLB Interests).

30. In general, the Plan's classification scheme follows the WLB Debtors' capital structure and relates to the different legal or factual nature particular to each class. For example, debt and equity are classified separately, different types of debt are also classified separately. In addition, WLB Intercompany Interests (Class 6) are classified separately from Interests in the WLB Debtors (Class 8) held by third parties.

31. I believe that each of the Claims or Interests in a particular Class are substantially similar to the other Claims or Interests in such Class, and there is a reasonable basis for separate classifications. The differences in classification are in the best interest of creditors, foster the WLB Debtors' restructuring efforts, do not violate the absolute priority rule, and do not needlessly

increase the number of classes. Accordingly, I believe that the Plan fully complies with and satisfies section 1122 of the Bankruptcy Code.

2. Specification of Classes, Impairment, and Treatment — § 1123(a)(1 – 3).

32. It is my understanding that Article III of the Plan specifies in detail how Claims and Interests are classified, whether such Claims and Interests are impaired, and the treatment that each Class of Claims and Interests will receive under the Plan.

3. Equal Treatment of Similarly Situated Claims and Interests — § 1123(a)(4).

33. It is my understanding that the Plan provides for identical treatment within each Class of Claims or Interests. Except as otherwise provided in the Plan, all Holders of Allowed Claims or Interests will receive the same rights as other Holders of Allowed Claims or Interests within such Holders' respective Class.[7]

4. Means for Implementation — § 1123(a)(5).

34. I understand that section 1123(a)(5) of the Bankruptcy Code requires that a chapter 11 plan provide adequate means for a plan's implementation. I believe that the Plan provides adequate means for implementation as required under section 1123(a)(5) of the Bankruptcy Code. Article IV and various other provisions of the Plan detail (a) the Restructuring Transactions, including the execution and delivery of any appropriate agreements or documents consistent with the Plan, the rejection, assumption, or assumption and assignment of Executory Contracts and Unexpired Leases, and the filing of certificates and documents as appropriate and pursuant to applicable law, (b) the consideration sources for Plan distributions, which include the

[7] Pursuant to the Committee Settlement, the Plan provides that Holders of Allowed First Lien Deficiency Claims shall waive their rights to recovery of any amount associated therewith from the General Unsecured Claims Amount.

Purchaser Stock, the New First Lien Debt, the New Second Lien Debt, and the General Unsecured Claims Amount, (c) that notes, instruments, certificates, and other existing securities are cancelled, (d) the Plan Administrator's authority and responsibilities in connection with the Plan Administrator's effectuation and administration of the Plan, including winding down the WLB Debtors' businesses and affairs as expeditiously and as reasonably possible, (e) the Plan Administrator's and Claims Administrator's respective authority to make all distributions to holders of Allowed Claims in accordance with the Plan, (f) that all Liens on the WLB Debtors' property are released, (g) that the Retained Causes of Action shall vest in the WLB Debtors on the Plan Effective Date, and the Plan Administrator's ability to enforce rights related thereto when exercising reasonable business judgment, (h) the corporate matters that shall become effective on the Plan Effective Date, such as the dissolution of the boards of the WLB Debtors, and (i) exemption from certain taxes and fees.

35. As a result, I believe that the Plan satisfies section 1123(a)(5) of the Bankruptcy Code.

5. Prohibition of Issuance of Non-Voting Stock — § 1123(a)(6).

36. I am advised that section 1123(a)(6) of the Bankruptcy Code requires that a corporate debtor's chapter 11 plan provide that a reorganized debtor's charter is to include a prohibition against issuing non-voting equity securities and related protections for preferred shareholders. I believe that this provision is inapplicable to the Chapter 11 Cases, because pursuant to the Plan, the WLB Debtors are selling substantially all of their assets and will thereafter wind down their operations.

6. Selection of Officers and Directors — § 1123(a)(7).

37. I understand that section 1123(a)(7) of the Bankruptcy Code requires that a chapter 11 plan contain only provisions related to selecting directors and officers that are

consistent with the interests of creditors and equity security holders and with public policy. I believe that the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. As of the Plan Effective Date, the Plan Administrator shall act as the Remaining WLB Debtors' sole officer, director, and manager, as applicable, with respect to the Remaining WLB Debtors' affairs to the extent that the Purchaser does not acquire the equity interests of any such Remaining WLB Debtor pursuant to the Sale Transaction. The identity and compensation of the Plan Administrator is disclosed in the Plan Supplement.

B. The Court Has Approved the WLB Debtors' Disclosure Statement — § 1129(a)(2)

38. It is my understanding that the Bankruptcy Code requires that parties in interest receive the plan or a summary of the plan and a court approved disclosure statement prior to or at the time of the solicitation period. The Disclosure Statement and the Solicitation Package (as defined in the Bidding Procedures Order) were approved on December 18, 2018 as containing adequate information pursuant to the Disclosure Statement Order. In addition, I believe that the WLB Debtors have timely mailed notices and ballots to the relevant interested parties, and all applicable notice periods were satisfied. I believe that the WLB Debtors, through their Notice and Claims Agent, complied with the content and delivery requirements of the Disclosure Statement Order.[8]

C. The WLB Debtors Proposed the Plan in Good Faith — § 1129(a)(3).

39. I understand that section 1129(a)(3) of the Bankruptcy Code requires that a chapter 11 plan be proposed in good faith and not by any means forbidden by law. I believe that

[8] Affidavit of Donlin, Recano & Company, Inc. Regarding Service of Solicitation Packages with Respect to Disclosure Statement for Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates [Docket No. 902] (the "Solicitation Affidavit").

the WLB Debtors have proposed the Plan in good faith and not by any means forbidden by law, with the legitimate and honest purposes of restructuring the WLB Debtors' Estates to maximize stakeholder recoveries. The WLB Debtors engaged in extensive arm's length negotiations among the WLB Debtors, the Ad Hoc Group, the WMLP Debtors, the Conflicts Committee, the MLP Secured Parties, the Committee, the Coal Act Retirees Committee, the International Union of Operating Engineers, the UMWA, the Sureties, and other interested parties; obtained the Bridge Loan to fund the WLB Debtors' restructuring; and negotiated the terms of a holistic, consensual restructuring ultimately led to the RSA. The Plan is the culmination of these exhaustive efforts, and was entered into in order to ensure that the WLB Debtors' stakeholders realize the highest possible recoveries under the circumstances.

40. The WLB Debtors negotiated, drafted, and implemented their proposed restructuring in good faith. The Sale Transaction and related documents were negotiated, proposed, and entered into by the WLB Debtors and the Purchaser in good faith and from arm's-length bargaining positions, without any collusion, fraud, or attempt to take grossly unfair advantage of any party, including any potential purchaser. As such, I understand that the Plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code and can be implemented without violating applicable law.

D. Payment of Professional Fees and Expenses Are Subject to Court Approval — § 1129(a)(4).

41. I understand that section 1129(a)(4) of the Bankruptcy Code requires a court to approve certain fees and expenses that either a plan proponent, debtor, or person receiving property distributions under the plan has paid as reasonable. It is my understanding that all payments made or to be made by the WLB Debtors for services or for costs or expenses in connection with these Chapter 11 Cases prior to the Plan Effective Date, including all Professional Fee Claims, have

been approved by, or are subject to approval of, the Court. Further, Article II.B of the Plan provides that all final requests for payment of Professional Fee Claims shall be filed and served no later than 30 days after the Plan Effective Date for determination by the Court, after notice and a hearing, in accordance with the procedures established by the Bankruptcy Code and prior Court orders. This provides interested parties with adequate time to review such Professional Fee Claims. Therefore, the requisite Court approval and reasonableness requirements are provided for under the Plan.

E. The Compliance with Governance Disclosure Requirements Does Not Apply to the WLB Debtors — § 1129(a)(5).

42. I understand that section 1129(a)(5) of the Bankruptcy Code requires (a) that a plan proponent disclose the identity and affiliation of any individual proposed to serve as a director or officer of the debtor, or a successor thereto, under a chapter 11 plan, (b) that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy, and (c) that a plan proponent disclose the identities or affiliations of insiders to be employed or retained by the reorganized debtors as directors and officers and the nature of any compensation for such insider. I understand that the Plan provides that the WLB Debtors' existing board shall be dissolved and any remaining officers and directors, managers, or managing members of the WLB Debtors shall be dismissed to the extent that the Purchaser does not acquire the equity interests of any such Remaining WLB Debtors pursuant to the Sale Transaction. In addition, I understand that as of the Plan Effective Date, the Plan Administrator shall act as the Remaining WLB Debtors' sole officer, director, and manager. The identity and compensation of the Plan Administrator are disclosed in the Plan Supplement. Accordingly, I believe that the WLB Debtors have satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code.

F. The Plan Satisfies the Best Interests Test — § 1129(a)(7).

43. I understand that section 1129(a)(7) of the Bankruptcy Code requires that any chapter 11 plan must satisfy the "best interests of creditors" test, which provides that holders of claims or interests in impaired, non-accepting classes must receive under a chapter 11 plan at least as much as they would in a liquidation.

44. I believe that the Plan is clearly in the best interests of all creditors for the reasons set forth in the *Declaration and Expert Report of Robert A. Campagna in Support of Confirmation of the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates*, contemporaneously filed herewith. Furthermore, I believe that a chapter 7 liquidation would result in materially reduced sale proceeds, increased expenses, and the prospect of additional claims that were not asserted in the chapter 11 cases, which in turn would drain the WLB Debtors' estates' resources to the detriment of all stakeholders.

45. Accordingly, I believe that the Plan is in the best interests of Holders of Claims and Interests, and the requirements of section 1129(a)(7) of the Bankruptcy Code are satisfied.

G. Voting Requirements — § 1129(a)(8).

46. I have been advised that section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept the plan or be unimpaired under the plan. If not, the plan must satisfy the "cramdown" requirements of section 1129(b) of the Bankruptcy Code with respect to the claims or interests in that class.

47. It is my understanding that Classes 1 and 2 are Unimpaired and are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. It is also my understanding that Classes 3 and 4 are Impaired, and therefore were entitled to vote on the Plan. Both Classes 3 and 4 voted to accept the Plan, as detailed in the *Declaration of Jung W. Song on Behalf of Donlin, Recano & Company, Inc. Regarding Voting and Tabulation of Ballots Accepting and Rejecting*

Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates [Docket No. 1436] (the "Voting Report"). In light of the foregoing, I believe that the Plan comports with the voting requirements of section 1129(a)(8) of the Bankruptcy Code.

H. Priority Cash Payments — § 1129(a)(9).

48. I have been advised that section 1129(a)(9) of the Bankruptcy Code requires that persons holding claims entitled to administrative priority receive specified cash payments under a plan, unless they agree to different treatment. I understand that the Plan contemplates that Allowed Administrative Claims will be paid in full in cash or receive other treatment rendering them unimpaired. In addition, Allowed Priority Tax Claims will be paid in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. I believe that the Plan comports with the voting requirements of section 1129(a)(9) of the Bankruptcy Code.

I. At Least One Impaired Class Voted to Accept the Plan — § 1129(a)(10).

49. I understand that section 1129(a)(10) of the Bankruptcy Code requires that, if a class of claims is impaired under a plan, at least one impaired class of claims must accept the plan, excluding acceptance by any insider, as an alternative to the requirement under section 1129(a)(8) of the Bankruptcy Code that each class of claims or interests must either accept the plan or be unimpaired under the plan. I understand that acceptance of the Plan by either Class 3 or 4 would satisfy section 1129(a)(10) of the Bankruptcy Code, and here each of Class 3 and Class 4 has voted to accept the Plan, as detailed in the Voting Report.

J. The Plan Is Feasible — § 1129(a)(11).

50. I understand that section 1129(a)(11) of the Bankruptcy Code requires a court to determine that a chapter 11 plan is feasible and that confirmation of such plan is not likely to be followed by the liquidation or further financial restructuring of the WLB Debtors.

51. I believe that the Plan is clearly feasible. The Plan is predicated on the Sale Transaction, pursuant to which the WLB Debtors will sell substantially all of their remaining assets to the Purchaser. The WLB Debtors are fully capable of consummating the proposed Sale Transaction, which in turn will convey the WLB Debtors' assets to a more stable and deleveraged entity that can better and more efficiently operate the WLB Debtors' business on a go-forward basis.

52. Confirmation of the Plan will enable the WLB Debtors to consummate the Sale Transaction and make distributions to Holders of Allowed Claims without delay depending on their respective treatment. Under the Plan, Allowed Administrative Claims shall be paid from proceeds of the DIP Facility, as provided in the Wind-Down Budget, or from payments made directly by the Purchaser. In addition, the Committee Settlement Amount, in the amount of $3,250,000, provides the requisite funding necessary to facilitate payment of the General Unsecured Claims and to support the Claims Administrator in its duties post-Plan Effective Date. Finally, the Plan contemplates the appointment of the Plan Administrator, who will also serve as the Liquidating Trustee, and who will administer the Estates in accordance with the Wind-Down Budget.

53. Furthermore, the Stalking Horse Purchase Agreement and the Wind-Down Budget demonstrate that the WLB Debtors will have sufficient liquidity to meet their obligations under the Plan until all remaining Claims are satisfied or otherwise addressed pursuant to the Plan. Accordingly, I believe the Plan satisfies the feasibility requirement of section 1129(a)(11) of the Bankruptcy Code.

K. The Plan Provides for Payment of All Fees — § 1129(a)(12).

54. I understand that section 1129(a)(12) of the Bankruptcy Code requires the payment of all fees payable under 28 U.S.C. § 1930. Article XIV.C of the Plan includes an express provision requiring payment of all such fees in compliance with the Bankruptcy Code.

L. Retiree Benefits — § 1129(a)(13).

55. I understand that section 1129(a)(13) of the Bankruptcy Code requires that all retiree benefits continue post-confirmation at any levels established in accordance with section 1114 of the Bankruptcy Code. The WLB Debtors have obtained entry of the *Order Granting Debtors' Motion Seeking Authority to (A) Reject Certain Collective Bargaining Agreements, (B) Implement the Debtors' Proposal, and (C) Modify Certain Retiree Benefits* [Docket No. 1412], pursuant to which the WLB Debtors do not have any remaining obligations to pay retiree benefits (as defined by the Bankruptcy Code) except as set forth in the Proposal (as defined in the 1113/1114 Order) and except with respect to Coal Act obligations that the Debtors are seeking to modify consistent with the Coal Act Retirees Committee Settlement, as described in more detail below. As a result, I believe that the Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code.

M. Sections 1129(a)(6), and (14)–(16) Do Not Apply to the Chapter 11 Cases — § 1129(a)(6), (14)–(16).

56. I have been advised that the WLB Debtors are not subject to regulations that would invoke section 1129(a)(6)'s requirement that they seek regulatory approval for rate changes provided for under the Plan. The Plan does not propose any rate changes. Moreover, I understand that sections 1129(a)(14) and 1129(a)(15) of the Bankruptcy Code apply only to debtors that are individuals, and that section 1129(a)(16) of the Bankruptcy Code applies only to debtors that are nonprofit entities or trusts. The WLB Debtors are not individuals or nonprofit entities or trusts.

As a result, I believe that sections 1129(a)(6), 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code are not applicable to the WLB Debtors' Plan.

III. The Plan Complies with Section 1129(c), Section 1129(d), and Section 1129(e) of the Bankruptcy Code.

57. I understand that section 1129(c) of the Bankruptcy Code prohibits confirmation of multiple plans. Other than the Plan, no other plan has been filed in the Chapter 11 Cases. Accordingly, I believe that the requirements of section 1129(c) of the Bankruptcy Code are satisfied.

58. I understand that section 1129(d) of the Bankruptcy Code prohibits confirmation of a chapter 11 plan if it was designed and proposed to evade taxes or the requirements of section 5 of the Securities Act. I do not believe that the Plan was proposed for either of the proscribed purposes, and no party that is a governmental unit, or any other entity, has requested that the Bankruptcy Court decline to confirm the Plan on the grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act. Rather, I believe the WLB Debtors filed the Plan to maximize creditor recoveries, consummate the Sale Transactions expeditiously and to otherwise benefit the Estates.

59. Furthermore, the Chapter 11 Cases are not small business cases. Accordingly, I understand that section 1129(e) of the Bankruptcy Code does not apply to the Chapter 11 Cases.

60. In light of the foregoing, I believe the Plan satisfies the Bankruptcy Code's mandatory confirmation requirements.

IV. Coal Act Matters.

61. I understand that in their 1113/1114 Motion, the WLB Debtors requested this Court grant permission to "modify the [WLB] Debtors' obligations to make payments on account of all retiree benefits (as such term is defined in 11 U.S.C. § 1114), including Coal Act benefits."[9] I understand that the Coal Act Funds objected.[10] I was advised that because the Debtors were able to reach a settlement with the Coal Act Retirees Committee, as described in the Confirmation Brief, the parties agreed to defer any ruling on the Coal Act Funds' Objection to the Confirmation Hearing.[11] I understand that the Debtors now ask that the Court approve their settlement with the Coal Act Retirees Committee, and enter their previously requested relief with respect to termination of their Retiree Benefits under the Coal Act, which will be incorporated into the Confirmation Order.

62. I understand that the Debtors established their right to section 1114 relief with respect to their Coal Act obligations during the 1113/1114 Hearing, and will provide further evidence of this at the Confirmation Hearing. I understand that even prior to the upcoming

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[9] 1113/1114 Motion at 1; *see also* 1113/1114 Motion at Ex. 1, Proposed Order, ¶ 4 (Proposed Order granting Debtors authority to terminate Retiree Benefits by "(a) ceasing contributions to the group health and welfare and/or benefit plans described in the Motion, including individual employer plans pursuant to which the Debtors provide medical benefits to retirees of the Debtors, or any of their predecessors, current or prior affiliates, or controlled group companies, pursuant to the provisions of the Coal Act; (b) discontinuing remitting contributions or payments to the UMWA 1992 Benefit Plan; (c) discontinuing remitting contributions or payments to the UMWA Combined Benefit Fund and any other contributions or payments made by the Debtors pursuant to the Coal Act regardless of whether a claim under the Coal Act has arisen prior to the date hereof; and (e) modifying or terminating any other Retiree Benefits (as described in the Motion).").

[10] *See* Coal Act Funds' Objection to 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. 1213] (the "Coal Act Funds' Objection").

[11] *See* 2/14/2019 Hr'g Tr. at 105:5-8) ("[W]ith respect to the Coal Act liabilities, we're going to ask Your Honor to continue our 1113/1114 Motion to confirmation."); *see also id*. 109:21-110:22 (overruling Coal Act Funds' oral motion to dismiss the Debtors' 1114 Motion as it relates to the Coal Act as having been obviated by the Coal Act Committee settlement).

termination of the Debtors' IEP, the Debtors paid net over $1.1 million to the Combined Benefit Fund (as that term was defined in the Coal Act Stipulation)[12] in 2018, or approximately $100,000 on average per month on account of Coal Act beneficiaries.[13] I understand that following the termination of the Debtors' IEP (upon which all participants would be transferred from the IEP to the 1992 Fund), the Coal Act Funds' position is that the WLB Debtors would have an obligation to pay premiums to the 1992 Fund and Combined Benefit Fund that are approximately $600,000 per month until the WLB Debtors no longer exist. I understand that the Coal Act Funds' position is that "the only real issue is how long that remaining set of entities has to pay premiums," and that "given how little is at stake" during that interim period before the Debtors cease to exist, the Debtors could not meet their burden with respect to terminating their Retiree Benefit obligations under the Coal Act Funds.[14]

63. It is my understanding that there is no evidence to support the notion that the Debtors have the ability to pay a "mere" $100,000 per month under their Wind-Down Budget, let alone the $600,000 per month that the Coal Act Funds would seek following termination of the IEP. I understand that the WLB Debtors will have no assets, no cash flow, no revenue, and no business operations at that point. I have been advised that, despite the Debtors' asking repeatedly, the lenders have been extremely clear: they are not willing to fund the Coal Act premiums during the wind down period.[15]

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[12] *See Stipulation Regarding the Debtors' Coal Act Obligations* [Docket No. 1349].

[13] *See* Coal Act Stipulation, ¶ 2.

[14] February 14, 2019 Hr'g Tr. at 50:2-24.

[15] *Id*. at 89:12-16; *see also id.* at 143:18-144:7; February 14, 2019 Hr'g Tr. at 28:6-17 (Debtors' financial advisor Marc Puntus testifying that "[t]he secured lender group was clear and unequivocal from Day One that they were not going to assume any retiree benefit liabilities, period, the end, whether Coal Act or not Coal Act," and there were not really any other buyers available).

64. I understand that the wind-down budget was still being negotiated at the time of the 1113/1114 Hearing. Negotiations are now complete and I have been advised that the Stalking Horse Purchaser's position has not changed. I understand that the Stalking Horse Purchaser will not agree to pay premiums to the Coal Act funds. The WLB Debtors have been able to secure funds to protect some of their most vulnerable constituents, but there is no more money available. I believe that the Debtors therefore must reject the Coal Act Fund Retiree Benefits because they simply will not have the cash to pay them going forward (outside of the cash provided in the Coal Act Retirees Committee settlement).

65. In light of the foregoing, I believe that the Debtors have met their burden with respect to the Coal Act Funds, and the Court should permit the Debtors to reject those Coal Act benefits as well.[16]

[16] *See id.*; *see also* 1113/1114 Order ¶ 2 (finding Debtors had satisfied their burden with respect to rejection of Kemmerer and Beulah Retiree Benefits).

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/ Jeffrey S. Stein
Jeffrey S. Stein
Chief Restructuring Officer