

**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 MICHAEL G. HUTCHINSON IN SUPPORT OF
THE (I) DEBTORS’ EMERGENCY MOTION FOR ENTRY OF AN ORDER
AUTHORIZING AND APPROVING INTERCOMPANY SETTLEMENT TERM SHEET,
AND (II) WMLP DEBTORS’ EMERGENCY MOTION FOR ENTRY OF AN ORDER
AUTHORIZING AND APPROVING THE SETTLEMENT TERM SHEET BETWEEN
THE WMLP DEBTORS, THE MLP SECURED LENDERS, AND THE COMMITTEE**

1. I, Michael G. Hutchinson, submit this declaration (the “Declaration”) in support of the *Debtors’ Emergency Motion for Entry of an Order Authorizing and Approving Intercompany Settlement Term Sheet* [Docket No. 1467] (the “Intercompany Settlement Motion”), and the *WMLP Debtors’ Emergency Motion for Entry of an Order Authorizing and Approving The Settlement Term Sheet Between the WMLP Debtors, the MLP Secured Lenders, and the Committee* [Docket No. 1497] (the “WMLP Committee Settlement Motion”).² Except as otherwise indicated, all facts and opinions set forth in this Declaration are based upon my personal knowledge of the Debtors’ operations and finances, information learned from my review of relevant documents, and information I have received from other members of the Debtors’ management team and the

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 otherwise defined herein are used as they are defined in the Intercompany Settlement Motion and the WMLP Committee Settlement Motion, as applicable.

Debtors' advisors. If called upon to testify, I could and would testify competently to the facts and opinions set forth herein. I am authorized to submit this Declaration on behalf of the Debtors.

2. Since November 27, 2017, I have served as Interim Chief Executive Officer of Westmoreland Coal Company. In addition, I currently serve as its Principal Financial Officer of Westmoreland Coal Company and Interim Chief Executive Officer of Westmoreland Resources GP, LLC. Since 2012, I have served on Westmoreland Coal Company's Board of Directors, and have served in the role of chairman of the board's Audit Committee. In my capacity as Interim Chief Executive Officer, I am familiar with the WLB Debtors' day-to-day operations, business and financial affairs, and books and records.

3. I previously served as an Audit Partner of Deloitte & Touche from 1989 to 2012, after working with Deloitte since 1978. During my last fifteen years at Deloitte & Touche, I led the Denver Energy and Natural Resources Practice while, at the same time, managing the Audit and Enterprise Risk Management practice of the firm's Denver office. I also led the Energy and Financial Services Practices for Deloitte in Colorado, and from 2002 to 2012, I was the Partner in Charge of the firm's Colorado Audit practice where I directly led the daily operations of approximately 150 professionals.

4. In addition, I have served on the board of directors for several companies. Specifically, I have served as: (a) a director and the audit committee chairman for ONE Gas, Inc., a publicly traded natural gas utility, since January 31, 2014; (b) a director of CoBiz Financial Inc. from April 27, 2017, through October 1, 2018; and (c) a director of Oneok Partners GP LLC from April 16, 2015, through June 30, 2017. I graduated from the University of Northern Colorado in 1978 with a Bachelor of Science with a specialization in accounting.

The Debtors' Intercompany Arrangements

I. Corporate Relationships between the WLB Debtors and WMLP Debtors.

5. I understand that WLB holds approximately 94.4 percent of the common limited partnership interests of WMLP (the "Common Units"), which is a publicly-traded master limited partnership that owns the Kemmerer mining complex in Kemmerer, Wyoming.³ I understand that the remaining approximately 5.6 percent of Common Units are primarily publicly held (the "Public Units"), with WMGP holding 0.164 percent of the Public Units. I understand that WLB also owns 100 percent of the equity interests of WMGP.

6. I understand that there are numerous intercompany relationships between the WLB Debtors and the WMLP Debtors: (a) the WLB Debtors provide all personnel and management services necessary for the WMLP Debtors' operations; (b) WLB is designated as the employer under the United Mine Workers of America collective bargaining agreement with respect to the employees that operate 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, to the WMLP Debtors.

7. I understand that to facilitate the various forms of operational support between the WLB Debtors and the WMLP Debtors, WMLP and WMGP (but not WLB or any other WLB Debtor) are parties to that certain administrative and operational services agreement, dated as of January 1, 2015 (as amended, restated, modified and supplemented from time to time in accordance with the terms thereof, the "Shared Services Agreement"). I understand that under the Shared Services Agreement, the WLB Debtors (through WMGP) provide services and personnel to WMLP, and are reimbursed for related costs incurred on WMLP's behalf. I understand that the

³ In connection with the filing of the Intercompany Settlement Motion, the WMLP Debtors closed the sale of the Oxford mining complex in Ohio, which was their only other operating asset.

services provided by the WLB Debtors (through WMGP) include, among other things, operating services, engineering services, and general and administrative services, including legal, accounting, treasury, insurance administration and claims processing, risk management, health, safety and environmental, information technology, human resources, credit, payroll, internal audit, taxes, and engineering services. I understand that where costs are specifically incurred on behalf of one of WMLP's affiliates, those costs are billed directly to WMLP, and are allocated to WMLP in a variety of methods when the cost or service applies equally to all employees.

8. I understand that the Shared Services Agreement provides for an annual fixed fee, which is currently set at \$2.2 million, to compensate the WLB Debtors for providing management and other back-office services necessary to operate the WMLP Debtors' operations. I understand that for the year ended December 31, 2017, in addition to the annual fixed fee, WMLP reimbursed the WLB Debtors approximately \$64.5 million on account of expenses incurred by the WLB Debtors with respect to employee and certain other costs.

II. The Restructuring Discussions and Intercompany Disputes.

9. I understand that pursuant to the WLB Debtors' plan, the stalking horse bidder will acquire substantially all of the WLB Debtors' assets (including certain back-office, information technology, and related systems and records that historically were used to manage the WMLP Debtors' business) and employ the WLB Debtors' executive management team. I understand that, ahead of closing the WLB Debtors' sale transaction, the parties have engaged in discussions regarding certain transition-related matters to provide for an orderly separation of the businesses in accordance with the provisions of the RSA. I understand that the parties' efforts have accelerated in recent weeks due to the impending confirmation hearing on the WLB Debtors' plan and certain claims asserted by the WMLP Debtors and their secured lenders and confirmation related objections. I believe that these issues and others, if left unresolved, may

inhibit the ability of the WLB Debtors and WMLP Debtors to move forward with their respective restructuring transactions.

Summary of the Material Terms of the Intercompany Settlement

10. After extensive discussions between the WLB Debtors, the WMLP Debtors, and their respective secured creditors, the parties have agreed to the settlement set forth in the Intercompany Settlement Motion (the “Intercompany Settlement”), which resolves all outstanding matters between the WLB Debtors and the WMLP Debtors, and ensures the support of the parties with respect to chapter 11 plans for the WLB Debtors and WMLP Debtors.

11. I believe that the Court should approve the Intercompany Settlement. More specifically, the Intercompany Settlement, which is the product of extensive good-faith, arm’s-length discussions between the Debtors and their respective stakeholders, obviates possible litigation between the estates regarding potential claims and causes of action. I believe that, in doing so, the Intercompany Settlement clears the way for the relevant parties to support confirmation of the WLB Debtors’ chapter 11 plan and the WMLP Debtors’ Kemmerer sales process.

12. I understand that the Intercompany Settlement sets forth the terms on which the WMLP Debtors (and, potentially, a purchaser of the Kemmerer Assets) will receive support from the WLB Purchaser for a transition period following the WLB Debtors’ emergence from chapter 11. The continuation of shared services will provide clarity to the market and other key stakeholders (including government regulators and sureties) that the WMLP Debtors will continue to receive the support necessary to complete their sales process. I believe that, based on my discussions with counsel, the Intercompany Settlement will also obviate possible litigation between the estates regarding their responsibility for the costs of the fees, expenses, and certain amounts to be paid by the estates on account of legacy liabilities.

13. The proposed Intercompany Settlement is not without cost to the WLB Debtors. The Intercompany Settlement requires the WLB Debtors to waive certain claims and causes of action against the WMLP Debtors (including possible fraudulent transfer and preferential transfer claims with respect to the Shared Service Agreement), their lenders, and certain other parties. Finally, the Intercompany Settlement will require the WLB Debtors to satisfy a larger than anticipated share of certain fees, costs, expenses, and other disbursements related to the administration of these cases and the prosecution of the 1113/1114 trial. I believe that the Intercompany Settlement's benefits far outweigh any such costs to the WLB Debtors. Among other things, the Intercompany Settlement, if approved by the Court, will permit the WLB Debtors to confirm their chapter 11 plan without objection by the WMLP Debtors or their secured lenders. The Intercompany Settlement will also resolve certain objections by the WMLP Debtors' lenders regarding the allocation of professional fees between the estates. Accordingly, I believe that the Court should approve the Intercompany Settlement and authorize the WLB Debtors to enter into the Term Sheet.

Summary of the Material Terms of the WMLP Committee Settlement

14. Following the filing of the Intercompany Settlement Motion, the Debtors engaged in extensive discussions with the Committee to obtain its support for the Intercompany Settlement and the WMLP Debtors' Kemmerer sales process, as well as to resolve possible claims and causes of action identified in the Committee's investigation. On February 25, 2019, the Debtors, with the support and consent of the Committee, filed the WMLP Committee Settlement Motion.

15. I believe that the Court should approve the proposed settlement set forth in the WMLP Committee Settlement Motion (the "WMLP Committee Settlement") and the relief requested thereby. I understand that the WMLP Committee Settlement, which is the product of extensive good-faith, arm's-length discussions between the Debtors, the MLP Secured Lenders,

and the Committee, obviates possible litigation between the Committee and the Debtors with respect to the release of the WMLP Debtors by the WLB Debtors, and the retention of certain claims and causes of action against the WLB Debtors by the WMLP Debtors and the MLP Secured Lenders. Furthermore, I understand that the WMLP Committee Settlement Motion resolves potential claims of the Committee against the MLP Secured Lenders and potential lien perfection defects related to the Kemmerer mines, which could possibly unlock value for the Committee's constituents but also jeopardize the Kemmerer sale process.

16. I believe that WMLP Committee Settlement clears the way for the relevant parties to support confirmation of the WLB Debtors' chapter 11 plan and the WMLP Debtors' Kemmerer sales process. I also understand that the WMLP Committee Settlement provides for the funding for administrative, priority, and other senior claims against the WMLP Debtors, which claims are intended to be paid pursuant to a chapter 11 plan. The foregoing will clear the way for the Kemmerer sale while also permitting the WMLP Debtors to wind down their affairs and pay claims in a prudent, responsible manner. Accordingly, I believe that the Court should approve the WMLP Committee Settlement and authorize the WLB Debtors to enter into the Term Sheet (as defined in the WMLP Committee Settlement Motion).

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

Dated: February 26, 2019
Houston, Texas

/s/ Michael G. Hutchinson

Name: Michael G. Hutchinson

Title: Interim Chief Executive Officer