

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

In re:

Westmoreland Coal Company, et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

**STATEMENT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
IN SUPPORT OF THE SETTLEMENT TERM SHEET BETWEEN THE  
WMLP DEBTORS, THE MLP SECURED LENDERS, AND THE COMMITTEE**

The Official Committee of Unsecured Creditors (the “Committee”) of Westmoreland Coal Company and its affiliated debtors and debtors in possession (collectively, the “Debtors”) hereby submits this statement (the “Statement”) in support of 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 “Motion”).<sup>2</sup> In support of the Statement, the Committee respectfully states as follows:<sup>3</sup>

**STATEMENT**

1. From the outset of these chapter 11 cases, the WLB Debtors and WMLP Debtors have pursued separate, but unavoidably related, paths to an exit from bankruptcy. Both groups of Debtors (and their lenders) advised the Committee that there likely would be no recoveries for general unsecured creditors in these cases. The Committee focused its efforts on pursuing an

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<sup>1</sup> 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](http://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.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

<sup>3</sup> This Statement is filed without prejudice to the rights of individual Committee members to object or otherwise be heard with respect to the Motion, and all such rights are fully reserved.

investigation of the validity, priority, and extent of the liens held by the Debtors' prepetition secured lenders and other potential estate claims and causes of action that could provide value for distribution to holders of general unsecured claims across all Debtor estates. However, recognizing the impact that litigation could have on the Debtors' respective abilities to consummate value maximizing sale transactions and operate as going concerns, the Committee also engaged in concurrent settlement discussions with the various parties in interest.

2. Given the faster timeline set for the WLB Debtors' cases, the Committee first concentrated on resolving issues and claims related to the WLB Debtors. Those efforts proved to be successful, and were memorialized in the settlement term sheet (the "WLB Settlement Term Sheet") filed on January 22, 2019 as an exhibit to the *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 WLB Settlement Term Sheet required that the terms of the settlement be incorporated into an amended plan of reorganization for the WLB Debtors (the "WLB Plan") that was acceptable to the Committee.<sup>4</sup>

3. After securing a recovery for the WLB Debtors' general unsecured creditors, the Committee turned its attention to addressing a potential lien challenge against the MLP Secured Lenders (the "Lien Challenge"). In the meantime, on February 13, 2019, the WLB Debtors and WMLP Debtors filed an emergency motion seeking approval of an inter-estate settlement (the "Intercompany Settlement") in conjunction with the confirmation of the WLB Plan on February

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<sup>4</sup> As the Committee advised the Court at the hearing held on February 4, 2019, the Committee had concerns with proposed modifications to the WLB Plan concerning certain Coal Supply Agreements. It appears that a resolution on this issue has been reached that is acceptable to the Committee; however, the Committee has not yet seen final language. Subject to reviewing the final WLB Plan, the Committee reserves all rights with respect thereto.

26th.<sup>5</sup> In addition, the WMLP Debtors selected Western Coal Acquisition Partners, LLC (an affiliate of Merida Natural Resources, LLC) (the “Purchaser”) as the winning bidder for their most valuable asset, the Kemmerer mine.<sup>6</sup> The Committee had significant, albeit discrete, concerns regarding both the Intercompany Settlement and the Kemmerer sale. The Committee endeavored to resolve all those concerns as well as its potential Lien Challenge by negotiating a global solution that would avoid expensive, value-draining litigation and provide general unsecured creditors with the best possible outcome under the circumstances.

4. After several weeks of good-faith negotiations, including discussions that were virtually non-stop over the weekend leading up to the WLB confirmation hearing, the Committee, the WMLP Debtors, and the MLP Secured Lenders agreed to a proposed settlement (the “WMLP Committee Settlement”), the material terms of which are reflected in the settlement term sheet (the “WMLP Settlement Term Sheet”) attached to the Motion.

5. The WMLP Settlement resolves the Committee’s Lien Challenge as well as its objections to the Intercompany Settlement and the Kemmerer sale. In exchange for the Committee agreeing not to pursue the Lien Challenge and the Committee’s support of the Intercompany Settlement and Kemmerer sale, general unsecured creditors are receiving a number of benefits. Among other things, the MLP Secured Lenders have consented to the funding of a wind-down process through a chapter 11 liquidating plan that, while far from certain, offers a possibility that general unsecured creditors of the WMLP Debtors will receive a recovery on their claims. The WMLP Committee Settlement also ensures that the WMLP Debtors’ estates will not be left administratively insolvent, and creditors that continued to

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<sup>5</sup> *Debtors’ Emergency Motion for Entry of an Order Authorizing and Approving Intercompany Settlement Term Sheet* [Docket No. 1367] (the “Intercompany Settlement Motion”).

<sup>6</sup> *Notice of Successful Bid in Connection with the Sale of the Kemmerer Mine and Related Assets* [Docket No. 1401] (the “Notice of Winning Bidder”).

provide goods and services to the WMLP Debtors after the commencement of these chapter 11 cases will be compensated accordingly. The WMLP Committee Settlement has includes funds for the payment of certain priority unsecured claims as well as payment set aside under the first-day “Specified Trade Claims” order.<sup>7</sup> The WMLP Committee Settlement also provides value to unsecured creditors by ensuring that many creditors will continue to have a customer through the Kemmerer sale and will have their claims paid through assumption of their contracts. The WMLP Committee Settlement also waives avoidance actions against general unsecured creditors, who will not need to worry about facing lawsuits to claw back payments already received at some point in the future. And finally, the WMLP Committee Settlement preserves the value obtained for unsecured creditors of the WLB Debtors under WLB Settlement Term Sheet by providing for the waiver of claims by the WMLP Debtors and MLP Secured Lenders that could have otherwise diluted recoveries for general unsecured creditors under the WLB Plan.

6. For these reasons and the reasons discussed below, the Committee supports entry of an order approving the terms of the WMLP Settlement Term Sheet.

**A. The Final Cash Collateral Order, the Committee’s Investigation, and the Sale Motion**

7. On October 9, 2018 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

8. On the Petition Date, the MLP Debtors filed an *Emergency Expedited Motion Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001 and 9014 for Entry of Interim and Final Orders (I) Authorizing the MLP Debtors to Use of Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Certain*

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<sup>7</sup> *Final Order (I) Authorizing the Payment of Specified Trade Claims and Outstanding Orders, and (II) Confirming Administrative Expense Priority of Outstanding Orders* [Dkt. No. 512] (the “Specified Trade Claims”).

*Protections to Prepetition Lenders, (III) Modifying the Automatic Stay, and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(B) and (C)* [Docket No. 18] (the “Cash Collateral Motion”). The Court entered orders approving the Cash Collateral Motion on an interim basis on October 10, 2018 [Docket No. 95], and on a final basis on November 14, 2018 [Docket No. 521] (the “Final Cash Collateral Order”).

9. Under the terms of the Final Cash Collateral Order, the Committee, to the extent it successfully sought and obtained standing by order of the Bankruptcy Court, was granted a right to (a) challenge the stipulations, admissions, and releases contained in the Final Cash Collateral Order, including, without limitation, those in paragraphs D, E, and K of the Final Cash Collateral Order or (b) otherwise assert any other claims, causes of action, objections or contests (including, without limitation, any actions for preferences, fraudulent transfers, or other avoidance power claims) against any MLP Secured Party (as defined in the Final Cash Collateral Order) relating to the MLP Secured Obligations or the MLP Secured Parties’ prepetition liens on behalf of the WMLP Debtors’ estates. Final Cash Collateral Order ¶ 19.

10. Immediately following its appointment and over the course of the next two months, the Committee began working to identify various sources of unencumbered value for distribution to general unsecured creditors, including potential estate claims and causes of action. To this end, the Committee’s professionals reviewed more than 22,000 documents and hundreds of the Debtors’ coal leases. As a result of these efforts, the Committee identified several potential lien challenge and other claims. The Committee also uncovered various parcels of real property that were never pledged as collateral to the MLP Secured Parties. Although the Committee’s investigation was still ongoing, on January 6, 2019, the Committee sent a letter to the Debtors outlining the claims it had identified and demanding that the Debtors prosecute those

claims. The MLP Secured Lenders received a copy of the demand letter and engaged in lengthy discussions with the Committee regarding the scope and merits of the claims it had identified.

11. On January 18, 2019, the WMLP Debtors filed the *Expedited Motion of Westmoreland Resource Partners, LP and Its Subsidiaries for Entry of (I) an Order (A) Establishing Bidding and Sale Procedures with Respect to the Sale of the Kemmerer Mine and Substantially All Assets Related Thereto, (B) Authorizing the Entry into a Stalking Horse Agreement and the Provision of Stalking Horse Protections, (C) Scheduling an Auction and Sale Hearing and Approving the Form and Manner of Notice Thereof and (D) Granting Related Relief; and (II) an Order Approving the Sale of Such Assets and Granting Related Relief* [Dkt. No. 1101] (the “Sale Motion”), seeking, among other things, approval of certain bidding procedures (the “Bidding Procedures”) and authority to sell the Kemmerer Assets (as defined in the Sale Motion) to the Purchaser (unless another bidder provided a higher and better offer for those assets).

12. On February 2, 2019, the Committee filed an objection and reservation of rights with respect to the Sale Motion [Dkt. No. 1260] (the “Committee Bidding Procedures Objection”).

13. On February 4, 2019, the Court held a hearing on the Debtors’ request to approve the Bidding Procedures, during which the Committee acknowledged that the arguments raised in the Committee Bidding Procedures Objection concern issues regarding approval of the Sale Transaction itself, and reserved its right to raise those arguments at the hearing to approve the proposed Sale Order. Following that hearing, the Court entered an order approving bidding procedures with respect to the Kemmerer Assets [Dkt. No. 1287].

14. On February 13, 2019, the Debtors filed the Intercompany Settlement Motion.

15. On February 19, 2019, the WMLP Debtors filed the Notice of Winning Bidder selecting Purchaser as the winning bidder for the Kemmerer Assets.

16. Following extensive negotiations with the WMLP Debtors and the MLP Secured Lenders over the course of the past several weeks, the Committee reached a settlement that is reflected in the WMLP Settlement Term Sheet filed with the Court on February 25, 2019.

**B. Benefits of the WMLP Settlement Term Sheet**

17. The Committee believes that the claims it identified against the MLP Secured Parties through its investigation have merit. Nonetheless, the Committee acknowledges that it would be costly and time-consuming to litigate those claims and the value of the potentially unencumbered assets it identified is uncertain. In addition, the MLP Secured Lenders have asserted that they would nonetheless be entitled to retain the value of any unencumbered assets identified through that litigation on account of their adequate protection claims. While the Committee disagrees with those assertions, litigating these issues would entail additional risk and expense. Based on these factors, the Committee believes there is a risk that if it pursues litigation against the MLP Secured Parties, it will prevail in its claims but generate little, if any, value for distribution to general unsecured creditors after the costs of litigation and senior claims have been satisfied (and taking into account the MLP Secured Lenders' deficiency claim, which would be entitled to a material portion of any recoveries paid to general unsecured creditors). The Committee determined that the WMLP Committee Settlement represents a favorable alternative to this potential pyrrhic victory, and is in the best interests of general unsecured creditors.

18. The resolution reflected in the WMLP Settlement Term Sheet represents a significant and material advancement in the WMLP Debtors' chapter 11 cases, and helps to ensure that general unsecured creditors will receive fair treatment under a liquidating plan to be

proposed by the WMLP Debtors. The key provisions of WMLP Settlement Term Sheet<sup>8</sup> are as follows:

- **Payment of Claims:** The WMLP Debtors, on or before the Effective Date,<sup>9</sup> will pay all Post-Petition Administrative Claims and up to \$8.6 million (the “Settlement Amount”) in other designated claims (the “Settlement Claims”), including, among other categories, (a) accrued and unpaid allowed claims under 503(b)(9) of the Bankruptcy Code, (b) accrued and unpaid allowed claims based under the Black Lung Benefits Act, (c) the costs to wind down the WMLP Debtors’ chapter 11 cases (the “Wind-Down”) (up to \$2.7 million), and (d) certain accrued and unpaid allowed claims of lienholders that are authorized to be paid under the Specified Trade Claims Order.

*The WMLP Debtors’ commitment to pay all budgeted claims and wind down expenses will ensure that the WMLP Debtors’ estates are not left administratively insolvent and that general unsecured creditors who continued to provide goods and services to the WMLP Debtors postpetition are compensated accordingly.*

- **Distribution of Excess Settlement Amount:** Any surplus from the Settlement Amount in excess of the Settlement Claims shall be distributed 75% to the MLP Agent (on behalf of the MLP Secured Lenders) in accordance with this Term Sheet and 25% to be distributed in accordance with a chapter 11 plan of liquidation to wind down the WMLP Debtors’ chapter 11 cases (the “WMLP Plan”) in a manner determined by the WMLP Debtors and the Committee.

*The agreement of the MLP Secured Lenders to allow a portion of any excess settlement payments to be distributed pursuant to a chapter 11 plan makes it possible that general unsecured creditors may ultimately receive a recovery on account of their claims.*

- **Wind-Down of WMLP Debtors’ Estates:** The WMLP Debtors, in consultation with the Committee, will file and seek confirmation of the WMLP Plan on a timeline that will allow the WMLP Plan to become effective by no later than April 30, 2019.

*The filing of a plan will provide for an orderly and expeditious wind-down of the WMLP Debtors’ Estates in a manner that is consistent with the WMLP Committee Settlement.*

- **Intercompany Settlement/Waiver of Intercompany Claims:** The Committee will support the Intercompany Settlement, and in exchange, the WMLP Debtors will

<sup>8</sup> The summary of the WMLP Settlement Term Sheet is qualified in its entirety by reference to the WMLP Settlement Term Sheet.

<sup>9</sup> The “Effective Date” is the later of (a) the date on which the order approving the Motion is approved, and (b) the date the Kemmerer sale is consummated.

waive any right to a distribution on account of any general unsecured claims against the WLB Debtors that would otherwise share in the General Unsecured Claims Amount (as defined in the WLB Settlement Term Sheet).

*The mutual waiver of intercompany claims will save litigation expense and ensure that the recoveries of the WLB Debtors' general unsecured creditors are not diluted as a result of a one-sided release under the Intercompany Settlement.*

- **Waiver of MLP Secured Lenders' Claims Against WLB:** The MLP Secured Lenders will waive all claims against the WLB Debtors (including (a) any section 503(b) claims or adequate protection claims in connection with the sale of the Oxford mine) and (b) any right to a distribution on account of any general unsecured claims against the WLB Debtors that would otherwise share in the General Unsecured Claims Amount (as defined in the WLB Settlement Term Sheet).

*The MLP Secured Lenders' agreement to waive their claims against the WLB Debtors will further ensure that recoveries of the WLB Debtors' general unsecured creditors under the WLB Plan are not diluted.*

- **Waiver of Avoidance Actions:** The WMLP Debtors and MLP Secured Lenders will use best efforts to cause the Purchaser to waive any avoidance actions against holders of general unsecured claims that are acquired, and if the Purchaser does not purchase any such avoidance actions,<sup>10</sup> the WMLP Plan will provide for the waiver of any avoidance actions against holders of general unsecured claims against the WMLP Debtors (to the extent not already waived).

*The waiver of avoidance actions ensures that trade vendors and recipients of royalty payments will not be sued in the future by the WMLP Debtors (or the Purchaser) to recover payments made by the WMLP Debtors prior to the commencement of these chapter 11 cases.*

19. Based on the foregoing, the Committee believes that the WMLP Settlement Term Sheet is in the best interests of general unsecured creditors of the WMLP Debtors under the circumstances. It also ensures that the claims of the WLB Debtors' general unsecured creditors are not diluted by intercompany claims or adequate protection claims asserted by the MLP Secured Lenders. Accordingly, the Committee supports approval of the Motion.

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<sup>10</sup> Following the filing of the WMLP Settlement Term Sheet, the Purchaser agreed that it was not acquiring any avoidance actions. Accordingly, all such avoidance actions will be retained and waived by the WMLP Debtors.

Dated: February 27, 2019

Respectfully submitted,

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