



ENTERED
02/28/2019

**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)
)	
)	Re: Docket No. <u>1467</u>

**ORDER AUTHORIZING AND APPROVING SETTLEMENT TERM SHEET
BETWEEN THE WLB DEBTORS AND THE COAL ACT RETIREES COMMITTEE**

Upon the motion (the “Motion”)² of the above-captioned Debtors for entry of this Order, approving a settlement consistent with the Term Sheet (the “Settlement”) attached hereto as **Annex 1**, by and among the WLB Debtors and the Coal Act Retirees Committee, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the parties negotiated the terms and conditions of the Settlement in good faith, at arm’s length, and free of any collusion; and this Court having found that the terms and conditions of the Settlement are fair, equitable, reasonable and in the best interests of the Debtors, their respective estates, creditors and equity holders, and is a valid and sound exercise of the business judgment of 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 used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Debtors and should be approved; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having found that there is good cause for waiving the stay referred to in Bankruptcy Rule 6004(h), to the extent it is applicable; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT.

1. The Motion is granted as provided herein.
2. The terms of the Settlement attached hereto as **Annex 1** are approved.
3. The Debtors are hereby authorized and directed to effectuate the Settlement consistent with the Term Sheet, and the Debtors are authorized to enter into, perform, execute, and deliver all documents, and take all actions, necessary to immediately continue and fully implement the Settlement in accordance with the terms and conditions set forth in the Term Sheet, all of which are hereby approved.
4. Upon the Debtors' entry into the Settlement, it shall be binding on them, their estates, and any trustee appointed in these cases.
5. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.
6. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: February 28, 2019.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Annex 1

Term Sheet

Term Sheet For Settlement Between The WLB Debtors,¹ The Section 1114 Coal Act Retirees Committee,² And The Stalking Horse,³ Regarding The WLB Debtors' Liabilities Under The Coal Act⁴

Westmoreland Coal Company and its subsidiary Basin Resources, Inc. (collectively, "**WCC**") provide retiree medical benefits to employees (or their eligible dependents) previously affiliated with the United Mine Workers of America ("**UMWA**") with respect to WCC's former "Heritage" operations in North Carolina and Virginia (collectively, "**Heritage Retirees**"), including benefits articulated in the Coal Act. Under the Coal Act, the WLB Debtors are currently obligated to pay premiums to the UMWA 1992 Benefit Plan ("**1992 Plan**") and the UMWA Combined Benefit Fund ("**Combined Fund**" and, collectively with the 1992 Plan, "**Coal Act Funds**"). In addition, under the Coal Act, the WLB Debtors are obligated to provide health benefits coverage to certain Heritage Retirees. Of the Heritage Retirees, those who are protected by the Coal Act are referred to herein as "**Coal Act Retirees**" and those who are not protected by the Coal Act are referred to herein as "**Non-Coal Act Retirees.**"

The WLB Debtors shall file a motion pursuant to Federal Rule of Bankruptcy Procedure 9019 seeking approval, as part of a modified Plan and Confirmation Order,⁵ of this Term Sheet, reflecting agreement between the Debtors, the Coal Act Retirees Committee, and the Stalking Horse, to settle and resolve the WLB Debtors' obligations under the Coal Act and with respect to the Coal Act Retirees, and to settle and resolve the Debtors' motion, filed at Docket 1091 ("**1114 Motion**"), as it relates to the Coal Act and the Coal Act Retirees, with the terms listed below.

1. **Safe Harbor.** Following consummation of the proposed sale of the **Core Assets** (as that term is defined in the 1114 Motion) to the Stalking Horse, the Stalking Horse will be deemed to qualify under the safe harbor set forth in Section 9701(c)(8) of the Coal Act and therefore will not be a "successor in interest" nor a successor to any "signatory operator" or related person as those terms are used in the Coal Act and federal labor law.

¹ The "**WLB Debtors**" includes Westmoreland Coal Company and its Debtor affiliates, including all successors-in-interest (but for the avoidance of doubt, excluding the Stalking Horse), with the exception of Westmoreland Resources Partners, LP ("**WMLP**") and WMLP's subsidiaries.

² Refer to the January 10, 2019 order, filed at Docket No. 1023, appointing the representatives to this committee to serve as representatives on behalf of Coal Act Retirees (defined below) in connection with the bankruptcy cases of the WLB Debtors. This Committee is referred to herein as the "**Coal Act Retirees Committee**".

³ The "**Stalking Horse**" refers to the ad hoc group of approximately 87% of WLB Debtors' first lien holders who are acquiring the Core Assets pursuant to the WLB Debtors' chapter 11 plan.

⁴ Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. § 9701, *et seq.* ("**Coal Act**").

⁵ The Joint Chapter 11 Plan of Westmoreland Coal Company and Certain Debtor Affiliates [Docket No. 788] (as further modified, amended, or supplemented in accordance with the terms thereof, the "**Plan**") and the order confirming the WLB Debtors' Plan ("**Confirmation Order**"), as modified to, among other things, incorporate this Term Sheet.

2. The IEP: Subject to Paragraph 5(b) below, the WLB Debtors shall continue to comply with Section 9711 of the Coal Act by providing Retiree Benefits as defined in Section 1114 of the Bankruptcy Code to the Coal Act Retirees through an individual employer plan until the earlier of (a) the closing of the sale of the Core Assets to the Stalking Horse (or any other purchaser under substantially the same terms) or (b) conversion of all of the WLB Debtors' cases to chapter 7 (the "**CDB Date**").
3. Surety Bonds: The Confirmation Order shall authorize and approve a draw, for benefit of the 1992 Plan, as of the CDB Date on (a) the surety bond issued for the benefit of the 1992 Plan in the amount of \$8,750,000 (Zurich bond #90038828), and (b) the surety bond issued for the benefit of the 1992 Plan in the amount of \$318,000 (Traveler's bond #104059215). The Debtors and the Stalking Horse shall be deemed to have waived defenses or objections to such a draw and any right to claw back any funds drawn on such surety bonds. Such waiver shall be binding on any successors of such parties, including any chapter 7 or chapter 11 trustee, or any plan administrator or liquidating trustee created under the Plan.
4. Premium Obligations: The WLB Debtors shall comply with the premium obligations set forth in Section 9704 and Section 9712 of the Coal Act until the CDB Date. This date shall be referred to herein as the "**Premium End Date**." The WLB Debtors shall have no obligations to make premium contributions to the Coal Act Funds at any time following the Premium End Date.
5. Temporary Continuation of IEP Coverage: The WLB Debtors shall facilitate the transition of Coal Act Retirees from the IEP to the 1992 Plan so as to assure that there is no gap in benefit coverage and a smooth process. To this end, at a minimum, the WLB Debtors shall provide the following transition services:
 - a. As soon as practicable, to the extent not previously provided, the Debtors shall transmit to the Coal Act Funds: (i) a roster of all beneficiaries with date of birth, social security number and current contact information; (ii) a copy of its benefit plan(s); (iii) designated liaisons from WCC's internal benefits staff, pharmacy benefits manager, and claims administrator/carrier, together with authorization to immediately begin coordination with the 1992 Plan and (iv) such other information as may be requested by the 1992 Plan as reasonably necessary to facilitate the transition of process;
 - b. The Confirmation Order shall direct the 1992 Plan to select an enrollment date ("**Enrollment Date**") for its coverage of the transferred beneficiaries to begin, provided, however, that such Enrollment Date shall occur within 90 days after the CDB Date. Notwithstanding Paragraph 2 above, prior to the Enrollment Date, the transferred beneficiaries shall continue to be covered by the IEP. On and after the Enrollment Date, the transferred beneficiaries shall be covered by the 1992 Plan.
 - c. WCC and its carrier and pharmacy benefits manager shall be directed to send the required Medicare written notice to the beneficiaries and to Medicare, to the

effect that WCC is terminating coverage and the 1992 Plan is enrolling the beneficiaries for coverage to transition on the Enrollment Date.

- d. The Confirmation Order shall direct the 1992 Plan to send enrollment/information packets and insurance cards to the beneficiaries, and enroll the eligible beneficiaries so that their coverage begins at 12:01 a.m. on the Enrollment Date. WCC will terminate its coverage of the beneficiaries effective midnight of the night before the Enrollment Date.
 - e. Claims for covered benefits received after the Enrollment Date for dates of service prior to the Enrollment Date will be paid by WCC.
 - f. Any communications to the Coal Act Retirees from the Coal Act Retirees Committee regarding participation in the IEP or termination thereof or necessary to communicate this settlement shall first be provided to the WLB Debtors and the Stalking Horse with a reasonable opportunity to review and comment to assure that such communications do not alter or vary the terms of this settlement. The parties shall resolve any differences promptly and in good faith.
6. Bar on Further Modifications: The Debtors shall be barred from (a) seeking any additional relief under Section 1114 regarding the Coal Act Retirees' benefits, and (b) further modifying, changing or terminating the Retiree Benefits for the Coal Act Retirees prior to the applicable CDB Date.
 7. Non-Coal Act Retirees: The settlement contained herein shall **not** be used in any way to reduce any amounts previously offered to the UMWA in the 1114 Motion, including, but not limited to, the proposal set forth in Exhibit 2 to the 1114 Motion.
 8. Plan Support: The Coal Act Retirees Committee shall (a) withdraw their objection to the 1114 Motion and (b) support confirmation of the Plan.
 9. Successors: This agreement shall be binding on (a) any successor to or assignee of the Debtors, (b) the Stalking Horse or any other purchaser of the Core Assets, and (c) Chapter 7 trustee, Chapter 11 trustee, chapter 11 plan administrator, or a liquidating trustee created under a confirmed Ch. 11 Plan.

Section 1114 Coal Act Retirees Committee

By: <u>/s/ Allison Byman</u> Allison Byman, Esq. adb@bymanlaw.com	By: <u>/s/ Leif Clark</u> Hon. Leif Clark (Ret.) lmclark@leifmclark.com	By: <u>/s/ Sylvia Mayer</u> Sylvia Mayer, Esq. smayer@smayerlaw.com
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WLB Debtors

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Stalking Horse

By: <u>/s/ Thomas Mayer</u> Thomas Mayer tmayer@kramerlevin.com	By: <u>/s/ Philip Bentley</u> Philip Bentley pbentley@kramerlevin.com	By: <u>/s/ John Higgins</u> John Higgins jhiggins@porterhedges.com
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United States Bankruptcy Court
Southern District of Texas

In re:
Westmoreland Coal Company
Westmoreland Texas Jewett Coal Company
Debtors

Case No. 18-35672-drj
Chapter 11

CERTIFICATE OF NOTICE

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db +Basin Resources, Inc., 9540 South Maroon Circle, Suite 300, Englewood, co 80112-5730
db +Buckingham Coal Company, LLC, 9540 South Maroon Circle, Suite 300, x,
Englewood, CO 80112-5730
db +Dakota Westmoreland Corporation, 9540 South Maroon Circle, Suite 300,
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db Daron Coal Company, LLC, 9450 South Maroon Circle, Suite 300, Englewood, CO 80112
db +Harrison Resources, LLC, 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5730
db +Haystack Coal Company, 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5730
db +Oxford Conesville, LLC, 9540 South Maroon Circle, Suite 300, Englewood, co 80112-5730
db +Oxford Mining Company, 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5730
db +Oxford Mining Company - Kentucky, LLC, 9540 South Maroon Circle, Suite 300,
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db +San Juan Coal Company, 9540 South Maroon Circle, Suite 300, Englewood, Co 80112-5730
db +San Juan Transportation Company, 9540 South Maroon Circle, Suite 300,
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db +Texas Westmoreland Coal Company, 9540 South Maroon Circle, Suite 300,
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db +WCC Land Holding Company, Inc., 9540 South Maroon Circle, Suite 300,
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intp +Steven Roberts, P.O. Box 4, Kemmerer, WY 83101-0004

cr +Susan K Marek, 1614 Crestmon, Wharton, TX 77488-3433

cr +Texas Comptroller of Public Accounts, John Stern, P.O. Box 12548, Austin, TX 78711-2548

cr +The Crow Tribe of Indians, c/o Barnet B. Skelton, Jr., 815 Walker, Suite 1502,
Houston, TX 77002-5832

cr The Texas Ad Valorem Taxing Jurisdictions, c/o Tara LeDay, PO Box 1269,
Round Rock, TX 78680-1269

cr +Tractor & Equipment Co., Perkins Coie LLP, 1201 Third Avenue, Suite 4900,
Seattle, WA 98101-3095

intp +Trustees of the United Mine Workers of America 199, c/o Morgan, Lewis & Bockius LLP,
Attn: Crystal Axelrod, 1000 Louisiana Street, Suite 4000, Houston, TX 77002-5048

intp +Trustees of the United Mine Workers of America, c/o Morgan, Lewis & Bockius LLP,
Attn: Crystal Axelrod, 1000 Louisiana Street, Suite 4000, Houston, TX 77002-5048

cr +U.S. Bank National Association, as Trustee and Not, Shipman & Goodwin LLP,
One Constitution Plaza, Hartford, CT 06103-1919

cr +Virginia Bates Kolle, c/o S Marek, 1614 Crestmont, Wharton, TX 77488-3433

cr +Virginia Bates Kolle Family Trust, 1614 Crestmont St, Wharton, TX 77488-3433

cr Wells Fargo Vendor Financial Services, LLC, PO Box 13708, Macon, GA 31208-3708

intp +Western Coal Acquisition Partners, LLC, Bradley Arant Boulton Cummings LLP,
Attn: Jay R. Bender, 1819 Fifth Avenue North, Birmingham, AL 35203-2120

cr +Zurich American Insurance Company, c/o Duane J. Brescia, Clark Hill Strasburger,
720 Brazos, Suite 700, Austin, TX 78701-2531

cr +Zurich Insurance Company Ltd., c/o Duane J. Brescia, Clark Hill Strasburger,
720 Brazos, Suite 700, Austin, TX 78701-2531

cr +Zurich Insurance Group, Ltd., c/o Duane J. Brescia, Clark Hill Strasburger,
720 Brazos, Suite 700, Austin, TX 78701-2531

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
atp +E-mail/Text: ccooper@mooneygreen.com Feb 28 2019 21:47:00 Diana Bardes,
Mooney, Green, Saindon, Murphy & Welch, 1920 L Street, N.W., Suite 400,
Washington, DC 20036-5041

atp +E-mail/Text: sst@lawtoll.com Feb 28 2019 21:44:01 Sheldon S Toll,
Law Office of Sheldon S. Toll PLLC, 29580 Northwestern Hwy., Suite 1000,
Southfield, MI 48034-1031

District/off: 0541-4

User: aalo
Form ID: pdf002Page 4 of 6
Total Noticed: 162

Date Rcvd: Feb 28, 2019

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center
(continued)

cr E-mail/Text: houston_bankruptcy@LGBS.com Feb 28 2019 21:45:37 Harris County,
Linebarger Goggan Blair & Sampson LLP, C/O John P. Dillman, PO Box 3064,
Houston, TX 77253-3064

cr +E-mail/Text: stephen@youtzvaldez.com Feb 28 2019 21:44:06
International Union of Operating Engineers, Local, c/o Youtz & Valdez PC,
900 Gold Avenue SW, Albuquerque, NM 87102-3043

cr E-mail/Text: pat@pmfpc.com Feb 28 2019 21:46:39 United Mine Workers of America,
c/o Patrick M. Flynn, P.C., 1225 North Loop W, STE 1000, Houston, TX 77008-1775
TOTAL: 5

***** BYPASSED RECIPIENTS (undeliverable, * duplicate) *****

atp The WMLP Debtors and the Conflicts Committee of th
atp Vedder Price P.C.
cr ACE American Insurance Company
cr ACE Insurance Company of Texas
cr ACE Property & Casualty Insurance Company
intp Andrew Skillin
intp Ankura Trust Company, LLC
intp Anthony Winder
intp Argonaut Insurance Company
cr Avista Corporation
cr Benjamin J. Smith
intp Brett Grunig
intp Brian Nelson
intp CCU Coal and Construction LLC
intp CIBC Bank USA
intp Calder Lutz
cr Canadian Imperial Bank of Commerce
intp Charles M. Hunzie
cr Chevron Products Company, a division of Chevron U.
cr Chrystella Montoya
cr Chubb Insurance Company of Canada
cr City of Dover, Ohio
intp Clarson Moore
cr Claud E Onrada
intp Claudia Ourada
intp Clint Bowen
op Coal Act Retirees Committee
intp Connie Gunter
cr Conveyors & Equipment, Inc.
intp David Auilg
intp Dower Rolex
intp Eddie W Gomez
intp Emily Oddino
intp Epsilon Palomins
inre Ethel Nadine Mead, Trust
cr Everly I Silva, Sr.
cr Federal Insurance Company
cr First Surety Corporation
cr GT Nix Construction, Inc.
intp Gary Biebinger, Jr.
cr Genesis Alkali, LLC
intp Gilbert Remmal
cr Great Northern Insurance Company
intp Great Northern Properties L.P.
cr HYG Financial Services, Inc. fka NMHG Financial Se
cr Henry Moore
intp Hopedale Mining LLC
cr Illinois Union Insurance Company
cr James Cardill, Birdstone Gap, VT
intp James W Barker
intp Jason B Chandler
intp Jason K.
intp John B. McKnight, IV
intp John Beachler
intp Johnny L. Cantor
intp Joni Henderson
intp Kathleen Plaistd
intp Kevin L.
cr Kinder Morgan Utopia LLC
intp Larry Kennedy
cr Lenders and Ad Hoc Noteholders
intp Les Rex
intp MKiall
cr MLP Ad Hoc Group
intp Mar-Bow Value Partners, LLC
cr Marie Crum
consult McKinsey Recovery & Transformation Services U.S.,

District/off: 0541-4

User: aalo
Form ID: pdf002

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Total Noticed: 162

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***** BYPASSED RECIPIENTS (continued) *****

intp Mickil Klinginbury
 cr Montana Department of Natural Resources and Conser
 cr Montana Department of Revenue
 intp Moody's Investors Service, Inc.
 cr NRG Texas Power LLC
 intp Natural Resource Partners L.P.
 intp Navakai, Inc
 intp Neil L Argyle
 cr Nelson Brothers Mining Services, LLC
 cr Norman R. Mestos
 intp North Dakota Public Service Commissio
 cr Northwest Colstrip Owners (NWCO)
 intp Ohio Department of Natural Resources
 intp Ohio Environmental Protection Agency
 cr Ohio Machinery Co. ("Ohio Cat") and OMCO Leasing C
 cr Paul Buchanan
 cr Pension Benefit Guaranty Corporation
 cr Portland General Electric Company
 consult PricewaterhouseCoopers LLP
 cr Prudential Retirement Insurance and Annuity Company
 cr Puget Sound Energy, Inc.
 intp Robert Huff
 cr Robert T Sanchez
 cr Rock Springs Royalty Company LLC
 cr Ronald Crum
 intp Samoa Hale Jordan
 cr San Juan County Museum Association
 intp State of Montana, Department of Revenue
 cr Stephanie Crum
 cr Talen Montana, LLC
 cr Tenaska Power Services Co.
 intp Thayne Christensen
 crcm The Official Committee of Unsecured Creditors
 cr The Sierra Club
 intp The WMLP Debtors, US
 intp Tom Price
 cr Travelers Casualty and Surety Company of America
 intp Tyler Hysell
 cr U.S. Bank National Association
 cr United States Department of Labor
 cr United States Department of the Interior
 cr United States Secretary of Labor
 cr United States of America
 intp Verdie Winder
 intp Virgil Kent Service
 intp WPP LLC
 cr Wagner Equipment Co.
 cr Westchester Fire Insurance Company
 cr Westchester Surplus Lines Insurance Company
 intp Western Organization of Resource Councils
 cr Wheeler Machinery Co.
 intp Whitney Garrett
 cr Wilmington Savings Fund Society, FSB
 intp* +G. R. Peart, P.O. Box 114, Randolph, UT 84064-0114

TOTALS: 120, * 1, ## 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Mar 02, 2019

Signature: /s/Joseph Speetjens

District/off: 0541-4

User: aalo
Form ID: pdf002

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Total Noticed: 162

Date Rcvd: Feb 28, 2019

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on February 28, 2019 at the address(es) listed below:
NONE.

TOTAL: 0