

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:	)	Chapter 11
WESTMORELAND COAL COMPANY, <i>et al.</i> , <sup>1</sup>	)	Case No. 18-35672 (DRJ)
Debtors.	)	(Jointly Administered)

**NAVAKAI, INC.’S SECOND AMENDED APPLICATION FOR  
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIM AND  
CORRECTION TO CURE COSTS**

Navakai, Inc., a Colorado corporation, by and through its undersigned counsel, files this Second Amended Application for Allowance and Payment of Administrative Claim pursuant to 11 U.S.C. §§ 507(a)(2) and 503(b)(1) and Correction to Cure Costs (this “Application”), and hereby seeks entry of an order for allowance and payment of an administrative claim in the amount \$3,210.71 and sustaining its correction to cure costs as to the Actual Cure Amount of \$6,969.40.

In support of this Application, Navakai, Inc. respectfully states as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

<sup>1</sup> Due to the large number of debtors in these chapter 11 cases, for which joint administration has been requested, 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 proposed 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.

## BACKGROUND

3. On October 9, 2018 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Court”). The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered.

4. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

5. The Debtors have filed their *Third Supplemental Notice of (A) Executory Contracts and Unexpired Leases to be Assumed or Assumed and Assigned by Westmoreland Coal Company and Certain of its Debtor Affiliates Pursuant to the Plan, (B) Cure Costs, if any, and (C) Related Procedures in Connection Therewith* [Docket No. 1606] (the “Notice”).

6. The Debtors and Navakai, Inc. are parties to a number of executory contracts (collectively, the “Navakai Contracts”) for the provision of various IT services and the maintenance of various IT equipment (collectively, “Navakai Services”).

7. At the Debtors’ request, Navakai, Inc. has continued to provide the Navakai Services to the Debtors under the terms of the Navakai Contracts since the Petition Date. The Debtors have not paid all obligations that have arisen during the post-petition period for Navakai Services, and certain amounts remain due and owing for the period from and after the Petition Date through and including March 26, 2019. These amounts are described in greater detail in a chart attached hereto as Exhibit A.

### **RELIEF REQUESTED**

8. Navakai, Inc. respectfully requests that the Court enter an order for allowance and payment of its administrative priority claims in the amount of \$3,210.71 for the Navakai Services provided at the Debtors' request in the ordinary course of operations between the Petition Date and March 5, 2019, pursuant to 11 U.S.C. §§ 507(a)(2) and 503(b)(1). Navakai, Inc. corrects the cure costs stated in the Notice for the reasons stated herein, as the actual cure cost is \$6,969.40.

### **BASIS FOR RELIEF**

9. The Debtors as Debtors-in-Possession have an affirmative obligation to pay for goods and services provided post-petition in the ordinary course of the Debtors' operations at the Debtors' request.

10. The Debtors have failed to pay all amounts due and owing for Navakai Services provided at the Debtors' request under the Navakai Contracts from the Petition Date through March 26, 2019. Accordingly, all post-petition amounts owing to Navakai, Inc. for said Navakai Services should be allowed as an administrative expense claim and immediately paid by the Debtors pursuant to section 503(b)(1). These amounts total \$3,210.71, as reflected in Exhibit A.

11. The Debtors benefited from the post-petition provision of the Navakai Services provided by Navakai, Inc. at the Debtors' request by being able to continue operations and these benefits enabled the Debtors to preserve the estate.

12. Based upon the foregoing, Navakai, Inc. respectfully requests that the Court enter an order allowing their administrative expense claim in the amount of \$3,210.71 as set forth in Exhibit A, pursuant to 11 U.S.C. §§ 507(a)(2) and 503(b)(1). Supplemental information for any amount shown on Exhibit A will be made available upon request.

13. Additionally, the Notice contains an incorrect proposed cure amount. Through March 26, 2019, the amount necessary to cure the defaults for non-payment for the Navakai Services is no less than \$6,969.40, in addition to any amounts that may accrue after the filing of this correction, including past invoiced amounts (collectively, the “Actual Cure Amount”). The Actual Cure Amount includes the amounts stated on Exhibit A hereto.

### **RESERVATION OF RIGHTS**

13. Navakai, Inc. hereby reserves the right to amend its Administrative Claim should additional information become available warranting such action. Navakai, Inc. also reserves all of its rights, claims defenses, and remedies under the Bankruptcy Code and other applicable law.

### **CONCLUSION**

WHEREFORE, Navakai, Inc. respectfully requests that this Court (i) grant the allowance and payment of its administrative claim in the amount of \$3,210.71; (ii) sustain Navakai, Inc.’s correction to cure amounts as to the Actual Cure Amount of \$6,969.40; and (iii) grant Navakai, Inc. such other and further relief as this Court deems just and appropriate under the circumstances.

*[continued on next page...]*

Dated: March 29, 2019.

KANE RUSSELL COLEMAN LOGAN PC

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on March 29, 2019, a true and correct copy of the foregoing was served electronically via the court's ECF noticing system on all parties registered to receive notice, and additionally served on those parties required to receive service under the Debtors' *Third Supplemental Notice of (A) Executory Contracts and Unexpired Leases to be Assumed or Assumed and Assigned by Westmoreland Coal Company and Certain of its Debtor Affiliates Pursuant to the Plan, (B) Cure Costs, if any, and (C) Related Procedures in Connection Therewith* [Docket No. 1606].

/s/ Demetri J. Economou  
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