

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)
)	

**WESTMORELAND COAL COMPANY’S OMNIBUS RESPONSE TO,
AND EMERGENCY MOTION FOR ANY ORDER REGARDING,
CERTAIN MATTERS RELATED TO THE JOINT MOTION**

THIS MOTION SEEKS ENTRY OF AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE. A HEARING WILL BE HELD ON THIS MATTER ON APRIL 16, 2019, AT 2:00 P.M. (CT) BEFORE THE HONORABLE DAVID R. JONES, 515 RUSK STREET, COURTROOM 401, HOUSTON, TEXAS 77002.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

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.

Westmoreland Coal Company (“WLB”) respectfully states as follows with respect to this emergency motion for entry of an order regarding the *Response to Joint Motion* [Docket No. 1691] (the “UMWA Response”) and the *MLP Lenders’ Statement in Connection with the Proposed Settlement Between McKinsey and the United States Trustee* [Docket No. 1693] (the “MLP Lender Statement”) and, together with the UMWA Response, the “Responses”) with respect to the *Joint Motion by the Acting United States Trustee and McKinsey Recovery & Transformation Services U.S., LLC and Certain of Its Affiliates in Furtherance of Mediation Agreement* [Docket No. 1589] (the “Joint Motion”):²

Relief Requested

1. Under the proposed settlement contemplated by the Joint Motion, the U.S. Trustee and McKinsey Recovery & Transformation Services U.S., LLC (“McKinsey RTS”) have agreed, among other things, that McKinsey RTS will pay \$5,000,000 to resolve certain matters in connection with WLB’s application to retain McKinsey RTS.

2. The UMWA and the MLP Lenders (which do not oppose the settlement) request that the Court require the settlement proceeds to:³ (a) fund payments to certain UMWA retirees;⁴ (b) “satisfy part of Zurich’s demand for additional collateral” in connection with WMLP’s proposed sale of the Kemmerer mining complex;⁵ and (c) “provide incremental liquidity to help mitigate the risk of administrative insolvency and the risk that there will be insufficient funding to

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Joint Motion, UMWA Statement, or MLP Lender Statement, as applicable.

³ The Purchaser (as defined below) also filed a response to the Responses [Docket No. 1709].

⁴ UMWA Response ¶ 14; MLP Lender Statement ¶ 2.

⁵ MLP Lender Statement ¶ 2.

make the payments under the Committee Settlement” between WMLP, the MLP Lenders, and the Creditors’ Committee.⁶

3. WLB respectfully disagrees with the UMWA and MLP Lenders’ assertions in the Responses. Furthermore, WLB respectfully submits that the Court should reserve any decision regarding such matters until the UMWA and the MLP Lenders file the appropriate pleadings with the Court and the Court conducts an evidentiary hearing, on appropriate notice. Finally, in light of the public interest in the proposed settlement—as well as the efforts by Judge Isgur as mediator and the significant resources required to facilitate a joint hearing involving this Court, Judge Bernstein in the Southern District of New York, and Judge Huennekens in the Eastern District of Virginia—WLB submits that it is an inefficient use of judicial resources to address the issues raised in the Responses in connection with Tuesday’s hearing.

4. Accordingly, WLB engaged in discussions with the MLP Lenders and the UMWA. Those discussions have not resulted in an agreement as of the date hereof. Accordingly, WLB, with the consent of the Purchaser (as defined in the *Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates*) [Docket. No. 1561]), proposes that the Court overrule the Responses to the extent necessary to approve the Joint Motion and, in connection therewith, enter an order in connection with approval of the Joint Motion that provides:

Notwithstanding anything to the contrary in any order granting the Joint Motion or otherwise, the \$5,000,000 payment from McKinsey RTS to “the bankruptcy estates in the *Westmoreland Case*” shall be held in a segregated account by the Plan Administrator (as defined in the *Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates*) [Docket. No. 1561]) and shall not be distributed pending further final order of the Court with respect to allocation and distribution.

⁶ *Id.*

Reservation of Rights

5. The rights of all parties (including, without limitation, WLB, the Purchaser, the WMLP Debtors, the MLP Lenders, and the UMWA) regarding the above-captioned cases, including the relief requested in the Responses and/or any matter or proceeding regarding the use of the settlement proceeds and/or WMLP's interest (if any) in any portion of the settlement proceeds, are fully reserved and preserved in all respects.

Certificate of Conference

6. Prior to filing this motion, WLB's counsel contacted the United States Trustee and counsel to the MLP Lenders, the UMWA, McKinsey RTS, and the Purchaser regarding the relief requested. The UMWA and the MLP Lenders have advised WLB that they do *not* consent to the relief requested. Each other party has advised WLB's counsel that it does not oppose the relief requested.

WHEREFORE, WLB respectfully requests that the Court enter the Order filed with this motion, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
April 15, 2019

/s/ Matthew D. Cavanaugh

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Counsel to the Debtors and Debtors in Possession

Certificate of Service

I certify that on April 15, 2019, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavanaugh

Matthew D. Cavanaugh

**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. 1691, 1693

**ORDER REGARDING
CERTAIN MATTERS RELATED TO THE JOINT MOTION**

Upon reviewing the statements filed by the United Mine Workers of America [Docket No. 1691] and the MLP Lenders [Docket No. 1693] with respect to the *Joint Motion by the Acting United States Trustee and McKinsey Recovery & Transformation Services U.S., LLC and Certain of Its Affiliates in Furtherance of Mediation Agreement* [Docket No. 1589] (the “Joint Motion”), and the motion of Westmoreland Coal Company with respect thereto (the “WLB Motion”),² it is hereby ORDERED that:

1. Notwithstanding anything to the contrary in any order granting the Joint Motion or otherwise, the \$5,000,000 payment from McKinsey RTS to “the bankruptcy estates in the *Westmoreland Case*” shall be held in a segregated account by the Plan Administrator (as defined in the *Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor*

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 defined herein shall have the meanings ascribed to them in the WLB Motion.

Affiliates) [Docket. No. 1561]) and shall not be distributed pending further final order of the Court with respect to allocation and distribution.

2. The rights of all parties (including, without limitation, WLB, the Purchaser, the MLP Lenders, the WMLP Debtors, and the UMWA) regarding the above-captioned cases, including the relief requested in the Responses and/or any matter or proceeding regarding the use of the settlement proceeds and/or any person's interest (if any) in any portion of the settlement proceeds, are fully reserved and preserved in all respects.

3. The Court shall retain exclusive jurisdiction to enforce the terms of this order.

Dated: _____, 2019
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE