

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

WESTMORELAND COAL COMPANY, *et al.*¹

Debtors.

§

§ Chapter 11

§

§ Case No. 18-36572 (DRJ)

§

§ (Jointly Administered)

§

**DEBTORS' FIFTH OMNIBUS OBJECTION
TO CERTAIN PROOFS OF CLAIM (NO LIABILITY CLAIMS)**

THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THIS BANKRUPTCY CASE. YOU SHOULD IMMEDIATELY CONTACT THE OBJECTING PARTY TO RESOLVE THE DISPUTE. IF YOU DO NOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE TO THIS OBJECTION AND SEND A COPY OF YOUR RESPONSE TO THE OBJECTING PARTY WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE OBJECTION IS NOT VALID. IF YOU DO NOT FILE A RESPONSE WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED WITHOUT A HEARING.

A HEARING HAS BEEN SET ON THIS MATTER ON JUNE 11, 2019, AT 2:00 P.M., PREVAILING CENTRAL TIME, IN COURTROOM 400, 4TH FLOOR, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, 515 RUSK STREET, HOUSTON, TEXAS 77002.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

THIS OBJECTION SEEKS TO DISALLOW AND EXPUNGE CERTAIN PROOFS OF CLAIM. CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND CLAIMS ON EXHIBIT A TO THE ORDER ATTACHED TO THIS OBJECTION.

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 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.

The Reorganized WLB Debtors² and the WMLP Debtors³ (collectively, with the Reorganized WLB Debtors, the “Debtors”) in the above-captioned cases respectfully represent as follows in support of this omnibus claims objection (this “Objection”), and submits the *Declaration of Robert P. Esposito in Support of the Debtors’ Fifth Omnibus Objection to Certain Proofs of Claim (No Liability Claims)* attached hereto as **Exhibit 1** (the “Esposito Declaration”):

Relief Requested

1. By this Objection, the Debtors seek entry of the proposed order (the “Order”), filed with this Objection, pursuant to § 502(b) of the Bankruptcy Code, Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Objection Procedures (as defined herein) disallowing and expunging the claims identified on **Exhibit A** to the Order (collectively, the “No Liability Claims”) in their entirety because each such No Liability Claim is not supported by or consistent with the Debtors’ books and records, and lacks sufficient information or documentation to establish its *prima facie* validity.

Jurisdiction, Venue, and Procedural Background

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The Debtors confirm their consent, pursuant to rule 7008 of the Bankruptcy Rules, to the entry of a final order by the Court in connection with this Objection to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

² “WLB Debtors” and “Reorganized WLB Debtors” after the effective date, means all Debtors except for Westmoreland Resources GP, LLC, Westmoreland Resource Partners, LP (“WMLP”), and WMLP’s subsidiaries (collectively with WMLP, the “WMLP Debtors”).

³ Specifically, the WMLP Debtors are: (a) WMLP; (b) Westmoreland Kemmerer, LLC; (c) Oxford Mining Company, LLC; (d) Harrison Resources, LLC; (e) Oxford Mining Company-Kentucky, LLC; (f) Daron Coal Company, LLC; (g) Oxford Conesville, LLC; and (h) Westmoreland Kemmerer Fee Coal Holdings, LLC.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are §§ 105(a) and 502(b) of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 3007, and Rules 9013-1 and 3007-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

5. On October 9, 2018 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”). These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [ECF No. 71].

6. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. On October 18, 2018, the United States Trustee for the Southern District of Texas (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to § 1102 of the Bankruptcy Code (the “Committee”) [ECF No. 206].

7. The WMLP Debtors are operating their businesses and managing their properties as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

8. On March 2, 2019, the Bankruptcy Court entered the *Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (the “Confirmation Order”) [ECF No. 1561] confirming WLB Debtors’ plan of reorganization (the “WLB Plan”).

9. On March 15, 2019, the effective date of the WLB Plan occurred (the “Effective Date”) [ECF No. 1608].

The Claims Reconciliation Process

10. On November 9, 2018, the Debtors filed their Statements of Financial Affairs and Schedules of Assets and Liabilities, as required by § 521 of the Bankruptcy Code (collectively, the “Schedules”) pursuant to Bankruptcy Rule 1007 and the *Order Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs* [ECF No. 82].

11. On November 15, 2018, the Court entered the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(B)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(B)(9) Requests, and (IV) Approving Notice of Bar Dates* [ECF No. 524] (the “Bar Date Order”), establishing certain dates and deadlines for filing proofs of claims in these chapter 11 cases (collectively, the “Proofs of Claims”). Among other things, the Bar Date Order established: (a) December 12, 2018 at 5:00 p.m. prevailing Central Time, as the deadline for all non-governmental entities holding or wishing to assert a “claim” (as defined in § 101(5) of the Bankruptcy Code) against any of the Debtors that arose before the Petition Date to file a proof of such claim in writing and (b) April 8, 2019, at 5:00 p.m. prevailing Central Time, as the deadline for all governmental entities holding or wishing to assert a “claim” (as defined in § 101(5) of the Bankruptcy Code) against any of the Debtors that arose before the Petition Date to file a proof of such claim in writing.

12. To date, over 1,369 proofs of claims have been filed against the Debtors, totaling over \$2.772 billion in the aggregate for liquidated amounts. Because of the large number of claims in these cases, the Debtors sought and have been granted approval to file omnibus objections to certain claims in accordance with the procedures set forth in the *Order Approving Omnibus Claims Objection Procedures and Filing of Substantive Omnibus Claims Objections*

[ECF No. 1546] (the “Objection Procedures”). The Debtors and their advisors (collectively, the “Reviewing Parties”), have been working diligently to review the No Liability Claims, including any supporting documentation filed therewith. For the reasons set forth below, and based on the review to date, the Reviewing Parties have determined that the No Liability Claims should be disallowed and expunged as set forth herein.

Objection

13. Section 502 of the Bankruptcy Code provides, in pertinent part, as follows: “[a] claim or interest, proof of which is filed under § 501 of [the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502. Section 502(b)(1) provides that a court shall not allow a claim if “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.” *See* 11 U.S.C. § 502(b)(1). Moreover, Bankruptcy Rule 3007 provides certain grounds upon which “objections to more than one claim may be joined in an omnibus objection,” which includes when “the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because . . . they were presented in a form that does not comply with applicable rules.” Fed. R. Bankr. P. 3007(d).

14. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes prima facie evidence of the validity and the amount of the claim under § 502(a) of the Bankruptcy Code. *See, e.g., In re Tran*, 351 B.R. 440, 444 (Bankr. S.D. Tex. 2006), *aff'd*, 369 B.R. 312 (S.D. Tex. 2007) (holding that a properly filed proof of claim is prima facie evidence of the validity and amount of the claim.) A proof of claim loses the presumption of prima facie validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim’s legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988) (holding “If, however, evidence rebutting the claim is brought forth, then

the claimant must produce additional evidence to “prove the validity of the claim by a preponderance of the evidence.”) Once such an allegation is refuted, the burden reverts to the claimant to prove the validity of its claim by a preponderance of the evidence. *Id.* Despite this shifting burden during the claim objection process, “the ultimate burden of proof always lies with the claimant.” *Id.*

No Liability Claims

15. As set forth in the Esposito Declaration, the Debtors and the Reviewing Parties have reviewed their books and records and the claims register and have determined that they are not liable for the No Liability Claims identified on **Exhibit A** to the Order because the Debtors’ books and records do not reflect the liability asserted in the No Liability Claims. Furthermore, the No Liability Claims provide no basis or appropriate supporting documentation on which the Debtors can determine that a valid claim otherwise exists. Failure to disallow and expunge such No Liability Claims could result in the relevant claimants receiving an unwarranted recovery against the Debtors to the detriment of other similarly situated creditors. The relief requested herein is necessary to prevent inappropriate distribution of estate funds and to facilitate the administration of the claims allowance process. Accordingly, the Debtors request that the Court enter the Order disallowing and expunging the No Liability Claims identified on **Exhibit A** to the Order.

Reservation of Rights

16. This Objection is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of the Debtors to object to any claim on any ground whatsoever. The Debtors expressly reserves all further substantive or procedural objections. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the

Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to § 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

Separate Contested Matter

17. To the extent that a response is filed regarding any No Liability Claim and the Debtor is unable to resolve any such response, each such No Liability Claim, and the Objection as it pertains to such No Liability Claim, will constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Further, the Debtors requests that any order entered by the Court regarding an objection or other reply asserted in response to this Objection be deemed a separate order with respect to each proof of claim.

Notice

18. Notice of the hearing on the relief requested in this Objection has been provided by the Debtors in accordance and compliance with Bankruptcy Rules 4001 and 9014, as well as the Bankruptcy Local Rules, and is sufficient under the circumstances. Without limiting the forgoing, due notice was afforded, whether by facsimile, electronic mail, overnight courier or hand delivery, to parties in interest, including (collectively, the "Notice Parties"): (a) the Office of the United States Trustee for the Southern District of Texas; (b) the Committee; (c) the indenture trustee under the WLB Debtors' 8.75% senior secured notes due 2022; (d) the ad hoc group of lenders under the WLB Debtors' prepetition term loan facility due 2020 and the WLB Debtors' 8.75% senior secured notes due 2022; (e) the administrative agent under the WLB Debtors' prepetition term loan facility due 2020; (f) the administrative agent under the WMLP

Debtors' term loan facility due 2018; (g) the ad hoc committee of certain lenders under the WMLP Debtors' term loan facility due 2018; (h) the administrative agent under the WLB Debtors' debtor-in-possession financing facility; (i) the lenders under the WLB Debtors' debtor-in-possession financing facility; (j) counsel to the Conflicts Committee of the Board of Directors of Westmoreland Resources GP, LLC; (k) the United States Attorney's Office for the Southern District of Texas; (l) the Internal Revenue Service; (m) the United States Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (n) the offices of the attorneys general for the states in which the Debtors operate; (o) the United States Securities and Exchange Commission; (p) the Pension Benefit Guaranty Corporation; (q) holders of the No Liability Claims; and (r) any party that has requested notice pursuant to Bankruptcy Rule 2002.

WHEREFORE, the Debtors respectfully request that the Court enter an Order granting the relief requested herein, and such other and further relief as is just and equitable.

Houston, Texas
April 26, 2019

/s/ Matthew D. Cavanaugh

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Certificate of Service

I certify that on the 26th day of April 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

Exhibit 1

Esposito Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
	§	
WESTMORELAND COAL COMPANY, <i>et al.</i> ¹	§	Case No. 18-36572 (DRJ)
	§	
Debtors.	§	(Jointly Administered)
	§	

**DECLARATION OF ROBERT P. ESPOSITO
IN SUPPORT OF DEBTORS' FIFTH OMNIBUS OBJECTION
TO CERTAIN PROOFS OF CLAIM (NO LIABILITY CLAIMS)**

I, **ROBERT P. ESPOSITO**, hereby declare under penalty of perjury:

1. I am a Director of Alvarez & Marsal North America, LLC ("A&M"). A&M was retained by the above-captioned Reorganized WLB Debtors² and the WMLP Debtors³ (collectively, with the Reorganized WLB Debtors, the "Debtors") as restructuring advisor in connection with these chapter 11 cases. I have more than ten (10) years of restructuring experience.

2. I am generally familiar with the Debtors' day-to-day operations, financing arrangements, business affairs, and books and records that reflect, among other things, the Debtors' liabilities and the amount thereof owed to their creditors as of the Petition Date. I have read the

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³ Specifically, the WMLP Debtors are: (a) WMLP; (b) Westmoreland Kemmerer, LLC; (c) Oxford Mining Company, LLC; (d) Harrison Resources, LLC; (e) Oxford Mining Company-Kentucky, LLC; (f) Daron Coal Company, LLC; (g) Oxford Conesville, LLC; and (h) Westmoreland Kemmerer Fee Coal Holdings, LLC.

Debtors' Fifth Omnibus Objection to Certain Proofs of Claim (No Liability Claims) (the "Objection"), filed contemporaneously herewith.⁴

3. To the best of my knowledge, information, and belief, the assertions made in the Objection are accurate. In evaluating the No Liability Claims, the Debtors and the Reviewing Parties have reviewed the Debtors' books and records and the relevant proofs of claim, as well as the supporting documentation provided by each claimant or lack thereof, and have determined that each No Liability Claim should be disallowed and expunged. As such, I believe that the disallowance and expungement of the No Liability Claims on the terms set forth in the Objection is appropriate.

No Liability Claims

4. To the best of my knowledge, information, and belief, the Reviewing Parties have thoroughly reviewed the Debtors' books and records and the claims register and have been unable to identify any amounts due and owing on account of the No Liability Claims listed on **Exhibit A** to the Order. Further, the No Liability Claims as filed lack sufficient information or documentation to allow the Debtors to determine the validity of the claim. Failure to disallow and expunge the No Liability Claims could potentially result in the relevant claimant receiving an unwarranted recovery against the Debtors to the detriment of other creditors. As such, I believe that disallowance and expungement of the No Liability Claims on the terms set forth in the Objection and **Exhibit A** is appropriate.

⁴ Capitalized but undefined terms herein shall have the same meaning ascribed to them in the Objection.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information and belief.

Dated: April 26, 2019

/s/ Robert P. Esposito

Robert P. Esposito

Alvarez & Marsal North America, LLC