

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)
)	

**WMLP DEBTORS' EMERGENCY MOTION TO APPROVE CONSENSUAL
EXTENSION OF TIME TO ASSUME OR REJECT UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY RELATED TO THE KEMMERER ASSETS**

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 MAY 6, 2019, AT 2:30 P.M. (CT) BEFORE THE HONORABLE DAVID R. JONES, 515 RUSK STREET, COURTROOM 400, 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 Resource Partners, LP (“WMLP”) and its direct and indirect subsidiaries (collectively, the “WMLP Debtors”), as debtors and debtors in possession in the above-captioned cases, hereby file this motion (this “Motion”), seeking entry of an order approving the consensual extension by 55 days—through July 1, 2019—of the deadline for the WMLP Debtors to assume or reject unexpired leases of nonresidential real property (the “Kemmerer Real Property Leases”)² that relate to the mining properties and related assets owned by Debtors Westmoreland Kemmerer, LLC and Westmoreland Kemmerer Fee Coal Holdings, LLC.

Preliminary Statement³

1. Pursuant to section 365(d)(4) of the Bankruptcy Code, the deadline for the WMLP Debtors to assume or reject unexpired leases of nonresidential real property is May 7, 2019 (the “365(d)(4) Deadline”), and no further extensions are permitted without the counterparty’s prior written consent. The WMLP Debtors are working with their lenders on a transaction that will preserve the Kemmerer mine as a going concern (the “Kemmerer Transaction”).

2. In order to ensure that the Kemmerer Real Property Leases are not automatically deemed rejected on the current 365(d)(4) Deadline, the WMLP Debtors asked the lessors under the Kemmerer Real Property Leases for an extension of the 365(d)(4) Deadline through and including July 1, 2019. Each of the lessors have consented in writing to the requested extension.

² The Kemmerer Real Property Leases are all unexpired leases of nonresidential real property between any of the WMLP Debtors, on the one hand, and (a) the City of Kemmerer, (b) Rock Springs Royalty Co., (c) the State of Wyoming, including the Wyoming Office of State Lands and Investments, (d) the United States Department of the Interior, and/or (e) the applicable lessor of any unexpired lease of nonresidential real property relating to the Kemmerer mine, on the other hand.

³ Capitalized terms used but not defined in this section shall have the meanings ascribed to such terms elsewhere in this Motion.

Accordingly, the WMLP Debtors hereby seek court approval of this consensual extension of the 365(d)(4) Deadline with respect to the Kemmerer Real Property Leases.

Jurisdiction and Venue

3. 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 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012 (the “Amended Standing Order”). The WMLP Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this Motion 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. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The basis for the relief requested herein is section 365(d)(4) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”).

Background

5. On October 9, 2018 (the “Petition Date”), each WMLP Debtor – along with other affiliated entities not relevant to this pleading – filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The WMLP Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. 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 appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code.

6. On December 18, 2018, the Court entered an order extending the 365(d)(4) Deadline through and including May 7, 2019 [Docket No. 817] (the “Initial Extension Order”). Accordingly, a further extension of the 365(d)(4) Deadline requires the written consent of the applicable lessors. The WMLP Debtors have now secured the written consent of each of the lessors under the Kemmerer Real Property Leases.

Relief Requested

7. By this Motion, the WMLP Debtors request the entry of an order pursuant to section 365(d)(4) of the Bankruptcy Code, substantially in the form attached hereto as Exhibit A (the “Proposed Order”), extending the 365(d)(4) Deadline with respect to the Kemmerer Real Property Leases through and including July 1, 2019, which extension has been agreed to in writing by the applicable lessors.

Basis for Relief

8. Section 365(d)(4) of the Bankruptcy Code provides, in relevant part, as follows:

- (A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of —
 - (i) the date that is 120 days after the date of the order for relief; or
 - (ii) the date of the entry of an order confirming a plan.
- (B)
 - (i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the [debtor] or lessor for cause.
 - (ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

11 U.S.C. § 365(d)(4). The Initial Extension Order extended the 365(d)(4) Deadline by 90 days, through and including May 7, 2019. Accordingly, the WMLP Debtors must assume or reject the Kemmerer Real Property Leases before such date, unless, pursuant to section 365(d)(4)(B)(ii) of the Bankruptcy Code, the Court approves a further extension of time that has been agreed to in writing by the applicable lessors.

9. Given that the WMLP Debtors and their lenders are still working on finalizing the Kemmerer Transaction, which will extend beyond the current May 7, 2019 365(d)(4) Deadline, the WMLP Debtors asked each of the lessors under the Kemmerer Real Property Leases to consent to a further extension of the 365(d)(4) Deadline through and including July 1, 2019. Each of these lessors has provided its written consent to such extension.

10. Accordingly, the WMLP Debtors respectfully request that the Court enter the Proposed Order granting such consensual extension of the 365(d)(4) Deadline with respect to the Kemmerer Real Property Leases through and including July 1, 2019.

Emergency Consideration

11. The 365(d)(4) Deadline expires on May 7, 2019. Accordingly, it is imperative that the 365(d)(4) Deadline be extended prior to May 7. Accordingly, the WMLP Debtors respectfully submit that emergency consideration of this Motion is appropriate under the circumstances.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

12. To implement the foregoing successfully, the WMLP Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the WMLP Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

13. The WMLP Debtors will provide notice of this Motion to the following parties or their respective counsel (collectively, the “Notice Parties”): (a) the Office of the United States Trustee for the Southern District of Texas; (b) the Committee; (c) the purchaser of the WLB Debtors’ assets; (d) the administrative agent under the WMLP Debtors’ term loan facility due 2018; (e) the ad hoc committee of certain lenders under the WMLP Debtors’ term loan facility due 2018; (f) any statutory committee appointed in these cases; (g) the United States Attorney’s Office for the Southern District of Texas; (h) the Internal Revenue Service; (i) the Environmental Protection Agency and similar state environmental agencies for states in which the WMLP Debtors conduct business; (j) the offices of the attorneys general for the states in which the WMLP Debtors operate; (k) the Securities and Exchange Commission; (l) the Pension Benefit Guaranty Corporation; (m) the counterparties to the Kemmerer Real Property Leases; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002. The WMLP Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of page intentionally left blank]

WHEREFORE, the WMLP Debtors respectfully request that the Court enter the Proposed Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
May 1, 2019

/s/ Matthew D. Cavanaugh

Matthew D. Cavanaugh (Bar No. 24062656)

JACKSON WALKER L.L.P.

1401 McKinney Street, Suite 1900

Houston, Texas 77010

Telephone: (713) 752-4200

Facsimile: (713) 752-4221

Email: mcavanaugh@jw.com

*Conflicts Counsel to the WLB Debtors and Local
Counsel to the Debtors and Debtors in
Possession*

James H.M. Sprayregen, P.C.

Michael B. Slade (Bar No. 24013521)

Gregory F. Pesce (admitted *pro hac vice*)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

Email: james.sprayregen@kirkland.com

michael.slade@kirkland.com

gregory.pesce@kirkland.com

-and-

Edward O. Sassower, P.C.

Stephen E. Hessler, P.C. (admitted *pro hac vice*)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Email: edward.sassower@kirkland.com

stephen.hessler@kirkland.com

-and-

Anna G. Rotman, P.C. (Bar No. 24046761)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

609 Main Street

Houston, Texas 77002

Telephone: (713) 836-3600

Email: anna.rotman@kirkland.com

Counsel to the Debtors and Debtors in Possession

Dated: May 1, 2019
Houston, Texas

Respectfully submitted,

/s/ Oliver S. Zeltner

Heather Lennox (admitted *pro hac vice*)
Oliver S. Zeltner (Tex. Bar No. 24104000)
JONES DAY
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
E-mail: hlennox@jonesday.com
ozeltneber@jonesday.com

-and-

Timothy W. Hoffman (admitted *pro hac vice*)
JONES DAY
77 West Wacker
Chicago, Illinois 60601
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
E-mail: thoffman@jonesday.com

*Conflicts Counsel to the WMLP Debtors and
Counsel to the Conflicts Committee of Debtor
Westmoreland Resources GP, LLC*

Certificate of Service

I certify that on May 1, 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