

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

In re:

Westmoreland Coal Company, et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

**OMNIBUS LIMITED OBJECTION BY THE MLP LENDERS TO  
FINAL FEE APPLICATIONS AGAINST WLB DEBTORS  
[RELATES TO DOCKET NOS. 1724, 1725, 1731, 1733, 1734, 1735,  
1738, 1739, 1744, 1746, 1750 AND 1780]**

The MLP Lenders<sup>2</sup>, by and through their undersigned counsel, hereby submits this omnibus limited objection (the “Limited Objection”) with respect to the final fee applications (as each may be amended, each a “Professional Fee Application” and, collectively, the “Professional Fee Applications”) against the WLB Debtors (as defined below) filed by Ernst & Young LLP (“EY”) [Docket No. 1724], PricewaterhouseCoopers LLP (“PwC”) [Docket No. 1725], Jackson Walker LLP (“JW”) [Docket No. 1731], Drinker Biddle & Reath LLP (“Drinker”) [Docket No. 1733], Cole Schotz P.C. (“CS”) [Docket No. 1734], Berkeley Research Group, LLC (“BRG”) [Docket No. 1735], Baker & Hostetler LLP (“Baker”) [Docket No. 1738], Jefferies LLC (“Jefferies”) [Docket No. 1739] (as amended by [Docket No. 1780]), Morrison & Foerster LLP (“MoFo”)

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<sup>1</sup> 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 WMLP Debtors’ 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.

<sup>2</sup> The “MLP Lenders” refers to the lenders under that certain Financing Agreement, dated December 31, 2014, with Westmoreland Resource Partners, LP and its subsidiaries (as amended, supplemented or modified from time to time).

[Docket No. 1744], Alvarez & Marsal North America, LLC (“A&M”) [Docket No. 1746] and Kirkland & Ellis LLP and Kirkland & Ellis International LLP (collectively “K&E”) [Docket No. 1750] (each a “Professional” and, collectively, the “Professionals”). In support of this Limited Objection, the MLP Lenders respectfully represent as follows:

### **BACKGROUND**

1. The *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professional* [Docket No. 495] (the “Interim Compensation Procedures Order”), among other things, (a) specified procedures for the allocation of professional fees and expenses between the WLB Debtors and the WMLP Debtors, (b) expressly reserved the rights of any party-in-interest to contest any such allocation and (c) provided that any payments to Professionals would be subject to the *Final Order (I) Authorizing the MLP Debtors to Use Cash Collateral (II) Granting Certain Protection to Prepetition Lenders, (III) Modifying the Automatic Stay and (IV) Granting Related Relief* [Docket No. 521] (the “Cash Collateral Order”), including the Budget (as defined in the Cash Collateral Order), with the Cash Collateral Order and the Budget governing in the event of any inconsistency with the Interim Compensation Procedures Order.

2. Additionally, the *Order Authorizing and Approving Intercompany Settlement Term Sheet* [Docket No. 1548] (the “Intercompany Settlement Order”), among other things, specified allocations as between the WLB Debtors and the WMLP Debtors for professional fees and expenses incurred in connection with performing certain tasks for each of the Debtor’s estates and the percentage allocation as between the WLB Debtors and the WMLP Debtors for shared professional fees and expenses. Further, all parties to the Intercompany Settlement Term Sheet (as defined in the Intercompany Settlement Order) reserved their respective rights to contest

whether any particular services are appropriately attributable to the WLB Debtors and/or the WMLP Debtors, and to contest any fees and/or expenses related thereto.

3. Under the *Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates* [Docket No. 1561] (the “WLB Confirmation Order”) and the WLB Debtors’ plan of reorganization attached as Exhibit A to the WLB Confirmation Order, professionals retained by the WLB Debtors were required to file their final fee applications against the WLB Debtors by no later than April 14, 2019.

4. Accordingly, the Professionals have filed their respective Professional Fee Applications seeking final approval of fees and expenses for services performed for (or otherwise allocated by such Professional to) the WLB Debtors. However, many of the Professionals are still performing services for the WMLP Debtors and have therefore not filed final fee applications with respect to fees and expenses they have themselves deemed allocable to the WMLP Debtors. Thus, it is impossible (and impractical) at this point for the MLP Lenders to determine whether they agree with the Professionals’ allocations of professional fees and expenses as between the WMLP Debtors and the WLB Debtors.

#### **LIMITED OBJECTION**

5. The MLP Lenders file this Limited Objection to ensure that any order approving any of the Professional Fee Applications in no way violates the procedures and allocations set forth in the Interim Compensation Procedures Order and the Intercompany Settlement Order nor requires the WMLP Debtors to pay for any services not properly allocated to them under the Interim Compensation Procedures Order and the Intercompany Settlement Order.

6. Accordingly, the MLP Lenders request that any order(s) granting the Professional Fee Applications including the following language:

“For the avoidance of doubt, and notwithstanding anything to the contrary in this Order, neither (i) the approval of fees and expenses by this Order nor (ii) the payment of fees and expenses as authorized by this Order shall in any way prejudice the MLP Lenders’ rights to (a) object to the allocation of any fees and expenses, or the attribution of any particular services, to the WMLP Debtors, including after the entry of this Order and (b) oppose the use of cash collateral to pay any fees and expenses that were determined by the Court to be incorrectly allocated to the WMLP Debtors. The allocation of professional fees and expenses, and the attribution of any particular services, between the WLB Debtors and the WMLP Debtors shall remain subject to the procedures and allocations set forth in the Interim Compensation Procedures Order, the Cash Collateral Order (including the Budget), the Intercompany Settlement Order and the orders authorizing each Professional’s retention by the Debtors.”

#### CONCLUSION

7. For all of the reasons set forth herein, the MLP Lenders respectfully request that the Court (a) include the MLP Lenders’ proposed language in paragraph 6 above in any order(s) granting the Professional Fee Applications and (b) grant such other and further relief as the Court may deem proper.

**Dated:** May 3, 2019

Respectfully submitted,

/s/ Joseph E. Bain

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***Counsel to the MLP Lenders***

**CERTIFICATE OF SERVICE**

I certify that on May 3, 2019, I caused a copy of the foregoing document to be served by electronic transmission to all registered ECF users appearing in this case.

*/s/ Joseph E. Bain*

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Joseph E. Bain