

**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)
	)	

**FOURTH SUPPLEMENTAL  
DECLARATION OF STEPHEN E. HESSLER  
IN SUPPORT OF THE DEBTORS' APPLICATION  
FOR ENTRY OF AN ORDER AUTHORIZING THE  
RETENTION AND EMPLOYMENT OF KIRKLAND &  
ELLIS LLP AND KIRKLAND & ELLIS INTERNATIONAL  
LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS  
IN POSSESSION EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

I, Stephen E. Hessler, being duly sworn, state the following under penalty of perjury:

1. I am the president of Stephen E. Hessler, P.C., a partner of the law firm of Kirkland & Ellis LLP, located at 601 Lexington Avenue, New York, New York 10022, and a partner of Kirkland & Ellis International LLP (together with Kirkland & Ellis LLP, collectively, "Kirkland").<sup>2</sup> I am the lead attorney from Kirkland working on the above-captioned chapter 11 cases. I am a member in good standing of the Bar of the State of New York, and I have

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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 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> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (with all supplements and exhibits thereto, the "WLB Chapter 11 Plan"), which was attached to the order confirming the WLB Chapter 11 Plan [Docket No. 1561] as Exhibit A.

been admitted *pro hac vice* to practice in the United States Bankruptcy Court for the Southern District of Texas. There are no disciplinary proceedings pending against me.

2. I submit this fourth supplemental declaration in support of the *Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective Nunc Pro Tunc to the Petition Date* [Docket No. 277] (the "Application") of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), pursuant to sections 327(a) and 330 of title 11 of the United States Code (the "Bankruptcy Code") and rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rules 2014-1 and 2016-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules"). Except as otherwise noted, I have personal knowledge of the matters set forth herein.

### **Background**

3. On October 22, 2018, the Debtors filed the Application. In support of the Application, the Debtors filed the *Declaration of Stephen E. Hessler in Support of the Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective Nunc Pro Tunc to the Petition Date* (the "Original Declaration") as Exhibit B to the Application. On November 14, 2018, the Court entered an order granting the Application and authorized the employment and retention of Kirkland as attorneys for the Debtors [Docket No. 491].

4. On December 14, 2018, Kirkland submitted the *First Supplemental Declaration of Stephen E. Hessler, in Support of Application of the Debtors Application for Entry of an Order*

*Authorizing the Employment and Retention of Kirkland & Ellis LLP as Attorneys for the Debtors and Debtors in Possession Effective Nunc Pro Tunc to the Petition Date*, which disclosed modifications to its billing rates [Docket No. 778].

5. On January 31, 2019, Kirkland submitted the *Second Supplemental Declaration of Stephen E. Hessler, in Support of the Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective Nunc Pro Tunc to the Petition Date*, which disclosed additional information on parties searched in the Original Declaration as well as information on entities not disclosed in the Original Declaration [Docket No. 1224] (the "Second Supplemental Declaration").

6. On April 15, 2019, Kirkland submitted the *Third Supplemental Declaration of Stephen E. Hessler, in Support of the Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective Nunc Pro Tunc to the Petition Date*, which disclosed additional information on parties searched in the Original Declaration as well as information on entities not disclosed in the Original Declaration or Second Supplemental Declaration [Docket No. 1747].

7. As I stated in the previously filed declarations described above (collectively, the "Previous Declarations"), Kirkland has searched its electronic database of representations for connections to parties in interest in these chapter 11 cases. Certain connections were disclosed in the Previous Declarations. Since the Petition Date, Kirkland has updated those conflicts searches and has searched additional parties as Kirkland has become aware of additional parties in interest in these chapter 11 cases. In addition to the entities searched and disclosed in the Previous

Declarations, Kirkland has searched its electronic database for the entities listed on **Schedule 1**, attached hereto, each of which is an adviser to the official committee of unsecured creditors.<sup>3</sup>

8. Although not relevant in concluding that Kirkland is “disinterested,” out of an abundance of caution, I have included the results of Kirkland’s conflicts searches of the above-listed entities on **Schedule 2** to this supplemental declaration.<sup>4</sup> All current and prior representations of the parties identified on **Schedule 2** are in matters unrelated to the Debtors and these chapter 11 cases. Kirkland will update its disclosures as necessary and when Kirkland becomes aware of material information.

9. This supplemental declaration is submitted pursuant to section 1746 of title 28 of the United States Code. All facts set forth herein are based upon my personal knowledge of Kirkland’s practices and Kirkland’s representation of the Debtors and information learned from my review of relevant documents and information supplied to me by other parties, including partners or employees of Kirkland. No one individual at Kirkland has personal knowledge of all of the facts set forth in this supplemental declaration.

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<sup>3</sup> Kirkland’s inclusion of parties in **Schedule 1** is solely to illustrate Kirkland’s conflict search process and is not an admission that any party has a valid claim against the Debtors or that any party properly belongs in the schedules or has a claim or legal relationship to the Debtors of the nature described in the schedules.

<sup>4</sup> As referenced in **Schedule 2**, the term “current” means an entity listed as a client in Kirkland’s conflicts search system to whom time was posted in the 12 months preceding the Petition Date. As referenced in **Schedule 2**, the term “former” means an entity listed as a client in Kirkland’s conflicts search system to whom time was posted between 12 and 36 months preceding the Petition Date. As referenced in **Schedule 2**, the term “closed” means an entity listed as a client in Kirkland’s conflicts search system to whom time was posted in the 36 months preceding the Petition Date, but for which the client representation has been closed. Whether an actual client relationship exists can only be determined by reference to the documents governing Kirkland’s representation rather than its potential listing in Kirkland’s conflicts search system. The list generated from Kirkland’s conflicts search system is over-inclusive. As a general matter, Kirkland discloses connections with “former” or “closed” clients for whom time was posted in the last 36 months, but does not disclose connections if time was billed more than 36 months before the Petition Date.

**Additional Disclosures**

10. This supplemental declaration makes certain additional disclosures. Based on the conflicts searches conducted to date, to the best of my knowledge, neither I, Kirkland, nor any partner, of counsel, or associate thereof, insofar as I have been able to ascertain, has any connections with the Debtors, their creditors, or any other entities who may be parties in interest, their respective attorneys or accountants, the Office of the United States Trustee for the Southern District of Texas (the “U.S. Trustee”), any person employed by the U.S. Trustee, or any person employed by the Bankruptcy Court for the Southern District of Texas, the United States District Court for the Southern District of Texas, or the United States Court of Appeals for the Fifth Circuit, except as disclosed or otherwise described herein and in the Previous Declarations.

**Specific Disclosures**

11. The official committee of unsecured creditors’ investment banker is Jefferies LLC (“Jefferies”). As disclosed in **Schedule 2**, attached hereto, Kirkland has represented and currently represents Jefferies and certain of its affiliates in matters unrelated to these chapter 11 cases. I do not believe that this representation precludes Kirkland from meeting the disinterestedness standard under the Bankruptcy Code.

12. The official committee of unsecured creditors’ financial advisor is Berkeley Research Group, LLC (“Berkeley”). As disclosed in **Schedule 2**, attached hereto, Kirkland has represented and currently represents Berkeley in matters unrelated to these chapter 11 cases. I do not believe that this representation precludes Kirkland from meeting the disinterestedness standard under the Bankruptcy Code.

13. Generally, it is Kirkland’s policy to disclose entities in the capacity that they first appear in a conflicts search. For example, if an entity already has been disclosed in the

Previous Declarations in one capacity (e.g., a customer), and the entity appears in a subsequent conflicts search in a different capacity (e.g., a vendor), Kirkland does not disclose the same entity again in supplemental declarations, unless the circumstances are such in the latter capacity that additional disclosure is required.

**Affirmative Statement of Disinterestedness**

14. Based on the conflicts searches conducted to date and described in the Previous Declarations and herein, to the best of my knowledge and insofar as I have been able to ascertain, (a) Kirkland is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors’ estates and (b) Kirkland has no connection to the Debtors, their creditors, or other parties in interest, except as may be disclosed in the Previous Declarations and herein.

15. Kirkland will continue to review its files periodically during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, Kirkland will use its reasonable efforts to identify any such further developments and will file a supplemental declaration as required by Bankruptcy Rule 2014(a) and as stated in the Previous Declarations and herein.

*[Remainder of page intentionally left blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: May 17, 2019

Respectfully submitted,

*/s/ Stephen E. Hessler*

Stephen E. Hessler  
as President of Stephen E. Hessler, P.C., as  
Partner of Kirkland & Ellis LLP; and as Partner  
of Kirkland & Ellis International LLP

**SCHEDULE 1**

Berkeley Research Group, LLC  
Cole Schotz P.C.  
Jefferies LLC  
Morrison & Foerster LLP

**SCHEDULE 2**

<b>Name of Entity Searched</b>	<b>Name of Entity and/or Affiliate of Entity, that is a K&amp;E Client</b>	<b>Status</b>
Berkeley Research Group, LLC	Berkeley Research Group, LLC	Current
Jefferies LLC	Jefferies Finance LLC Jefferies Hong Kong Limited Jefferies LLC	Current Closed Closed