

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

<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>Westmoreland Coal Company, et al.,</b>	§	<b>Case No. 18-35672</b>
	§	
<b>Debtors.</b>	§	<b>(Jointly Administered)</b>

**Omnibus Response by the United States of America to Objections to Certain Claims**  
**(Related to Doc. Nos. 1790 and 1791)**

**To the Honorable David R. Jones,  
Chief United States Bankruptcy Judge:**

The United States of America (the “United States”), responds to objections by the Debtors to certain claims.

**Response to Objection at Doc. No. 1790**

**IRS Claim against Absaloka Coal, LLC**

The Debtors object to the IRS’s claim against Absaloka Coal LLC in excess of fourteen million dollars. [Doc. No. 1790-1, p. 13]. The majority of the IRS’s claim is an estimate for excise taxes, [Case No. 18-35673, Claim No. 1-1], but the Debtors allege that this entity is not liable for excise taxes because it did not mine coal after 2013.

The IRS requests a \$0 final excise tax return from Absaloka Coal, LLC, for the first quarter when it did not mine coal. A \$0 final return will allow the IRS to correct its records without the need to engage in discovery over the matter.

**IRS Claim against Harrison Resources, LLC**

The Debtors object to the IRS’s claim against Harrison Resources, LLC, which the IRS filed in the amount of \$16,100. The IRS’s claim contains estimates for excise and partnership taxes.

The IRS has received partnership returns from this entity, and the IRS anticipates amending its proof of claim to resolve this portion of the Debtors' objection. To resolve the remainder, the IRS requests a \$0 final excise tax return from Harrison Resources, LLC, for the first quarter when it did not mine coal.

**IRS Claim against Daron Coal Company, LLC**

The Debtors object to the IRS's claim against Daron Coal Company, which the IRS filed in the amount of \$27,000. [Doc. No. 1790-1, p. 13]. The majority of the IRS's claim is an estimate for excise taxes, [Case No. 18-35677, Claim No. 1-1], but the Debtors allege that (a) the entity is not liable for partnership taxes because it is included in the tax return for Westmoreland Resources Partners, LP, and (b) the entity is not liable for excise taxes because it did not actively mine coal during the periods included in the IRS's proof of claim.

The IRS requests a \$0 final excise tax return from Daron Coal Company for the first quarter when it did not mine coal.

**IRS Claim against Oxford Mining Company – Kentucky, LLC**

The IRS has amended its claim against Oxford Mining Company – Kentucky, LLC, to be filed in the amount of \$49,864.36. [Case No. 18-35681, Claim No. 1-2]. The claim reflects that it is for excise taxes, penalties, and interest, although some tax periods are estimated. The Debtors have objected to this claim alleging that (a) they paid tax deposits electronically against the liability of Oxford Mining Company, LLC, but (b) the payments should have been applied to the liability of Oxford Mining Company – Kentucky, LLC.

The United States disagrees. The IRS's records do not show that Oxford Mining Company, LLC, has paid more than it owed. Furthermore, any request to move federal tax deposits from one entity to another must be submitted to the IRS in writing.

**Response to Objection at Doc. No. 1791**

**OSMRE Claim against Westmoreland Coal Company**

The United States requests that the Court overrule the Debtors' objection to the Office of Surface Mining Reclamation and Enforcement ("OSMRE") claim without prejudice.<sup>1</sup>

The Debtors have objected to the master proof of claim filed by OSMRE, docketed at Claim No. 547, Case No. 18-35672. Claim No. 547 indicates that it is protective in nature—*i.e.*, unliquidated—and is on account of certain mining-related obligations of the Debtors. In objecting, the Debtors stated only that "[n]o liability exists on the Debtors' books and records on account of abandoned mine fees." [Doc. No. 1791-1, p. 6]. The United States disputes that this single statement together with a broadly-worded declaration is sufficient to overcome the *prima facie* validity of OSMRE's claim.<sup>2</sup>

OSMRE's initial review of its records indicates that it would need to audit nine entities holding forty-six permits in nine states in order to liquidate this claim. OSMRE anticipates that it would take a minimum of six months to complete these reclamation fee compliance audits necessary to liquidate the claim. If the Court does not overrule the Debtors' objection without prejudice, then the United States requests that the Court enter a scheduling order that provides the United States with adequate time to complete the discovery necessary to liquidate OSMRE's claim.

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<sup>1</sup> Section 502 of the Code provides for estimation of an unliquidated claim, but it does not say that a claim should be disallowed in its entirety simply because the claim is unliquidated. *See* 11 U.S.C. § 502(c).

<sup>2</sup> A party objecting to a proof of claim "must produce sufficient evidence to overcome the proof of claim's *prima facie* validity." *In re Today's Destiny, Inc.*, 2008 WL 5479109 at \*4, Case No. 05-90080 (Bankr. S.D. Tex. Nov. 25, 2008) (citing *In re Armstrong*, 320 B.R. 97, 102-03 (Bankr. N.D. Tex. 2005)).

Accordingly, the United States requests that the Court overrule the objections to its claims to the extent requested above and grant it such other and further relief as is equitable and just.

Dated: May 24, 2019.

Respectfully submitted,

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**Certificate of Service**

The undersigned certifies that he served the foregoing Response by ECF notification on the parties receiving ECF notice in this case on May 24, 2019.

*s/ Richard A. Kincheloe*  
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