UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
	)	
WESTMORELAND COAL COMPANY, *et al.*,[1]	)	Case No. 18-35672 (DRJ)
	)	
Debtors.	)	Jointly Administered
	)	
	)	

WMLP DEBTORS' (I) MEMORANDUM OF LAW IN SUPPORT OF (A) CONFIRMATION OF THE AMENDED JOINT PLAN OF LIQUIDATION OF THE WMLP DEBTORS AND (B) APPROVAL OF THE DISCLOSURE STATEMENT ON A FINAL BASIS AND (II) RESPONSE TO OBJECTIONS TO THE PLAN AND DISCLOSURE STATEMENT

[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.

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Westmoreland Resource Partners, LP ("WMLP"), Westmoreland Resource GP, LLC ("WMGP"), WMLP's direct and indirect subsidiaries (collectively with WMLP, the "WMLP Debtors"),[2] as debtors and debtors in possession in the above-captioned cases, file this memorandum of law in support of (a) confirmation of the *Amended Joint Plan of Liquidation for the WMLP Debtors*, to be filed prior to the Confirmation Hearing, which amends the *Joint Plan of Liquidation for the WMLP Debtors* filed on March 15, 2019 (Docket No. 1612) (as further modified, amended, or supplemented from time to time in accordance with the terms thereof, the "Plan"),[3] pursuant to section 1129 of title 11 of the United States Code (the "Bankruptcy Code"), (b) approval, on a final basis, of the *Disclosure Statement With Respect to Joint Plan of Liquidation for the WMLP Debtors*, dated March 15, 2019 (Docket No. 1613) (the "Disclosure Statement") and (c) response to objections to the Plan. In support of this memorandum of law, the WMLP Debtors rely upon the evidence that will be presented at the Confirmation Hearing and respectfully represent as follows:

PRELIMINARY STATEMENT

1. The Plan is the culmination of the WMLP Debtors' efforts to sell substantially all of their assets on a going concern basis. Before filing these Chapter 11 Cases, the WMLP Debtors had determined that it was in the best interest of their respective estates to sell all or substantially all of their respective assets, which were comprised primarily of thermal coal mining operations in Ohio and Wyoming.

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[2] The "WMLP Debtors" consist of the following entities: WMGP; WMLP; Westmoreland Kemmerer, LLC; Westmoreland Kemmerer Fee Coal Holdings, LLC; Oxford Mining Company, LLC; Harrison Resources, LLC; Oxford Mining Company-Kentucky, LLC; Daron Coal Company, LLC; and Oxford Conesville, LLC.

[3] Capitalized terms used but not defined herein have the meanings ascribed to them in the Plan.

2. Following a nearly six-month marketing process, the WMLP Debtors successfully sold their Ohio mining operations (along with an inactive Kentucky mine) on a going concern basis to CCU Coal and Construction, LLC ("CCU").[4] Nearly a month later, the ongoing marketing process yielded a buyer—Western Coal Acquisition Partners, LLC ("Western Coal")—for the Kemmerer mine in Wyoming.[5] After the Court approved the sale of the Kemmerer mine to Western Coal and the WMLP Debtors built consensus through good faith, arm's-length negotiations, the WMLP Debtors filed the original version of the Plan. That version of the Plan was predicated on the WMLP Debtors' consummating the Western Coal sale.

3. Subsequently, Western Coal terminated the asset purchase agreement underlying the Western Coal sale and the WMLP Debtors determined to instead pursue a sale of the Kemmerer mine to the WMLP Secured Lenders pursuant to a credit bid. Thereafter, the WMLP Debtors entered into the Kemmerer APA with Kemmerer Operations, LLC, an acquisition entity formed by the WMLP Secured Lenders, to acquire the Kemmerer mine and certain other assets (the "Kemmerer Sale"). Accordingly, the WMLP Debtors amended the Plan to account for changes to the terms of the Kemmerer Sale. While the WMLP Debtors were pivoting to the Kemmerer Sale, the WMLP Debtors reengaged with their constituents to rebuild the consensus they had enjoyed for the original Plan when it was predicated on the Western Coal sale. As a result of good faith and arm's length negotiations, the WMLP Debtors have achieved a global

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4 *See Order Approving Joint Expedited Motion of the WLB Debtors and the WMLP Debtors for Entry of an Order (I) Approving the Sale of (A) Substantially all of the Assets of Oxford Mining Company, LLC, and Certain of its Subsidiaries and (B) the Buckingham Mine (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith and (III) Granting Related Relief, Including Approval of the Related Sale Process* (Docket No. 1289), entered by the Bankruptcy Court on February 5, 2019.

5 *See Order (I) Approving the Sale of the Kemmerer Mine and Substantially all Assets Related Thereto Free and Clear of all Non-Assumed Liens, Claims, Encumbrances and Interests, (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (III) Granting Related Relief* (Docket No. 1560), entered by the Bankruptcy Court on March 2, 2019 (the "Prior Sale Order").

resolution of issues among the WMLP Debtors, the WMLP Secured Lenders, and the Creditors' Committee and won their support for the current version of the Plan.[6]

4. Should the Court approve the Kemmerer Sale, as the WMLP Debtors have separately requested, the Plan provides mechanisms for the WMLP Debtors to orderly wind up their respective Estates. The Plan maximizes the value of the WMLP Debtors' Estates in light of the sales of the Estates' assets. And, as set forth below, the Plan satisfies all requirements for its confirmation under chapter 11 of the Bankruptcy Code. Therefore, the Court should overrule all Objections (as defined below) and confirm the Plan.

BACKGROUND

A. Prepetition Capital & Corporate Structure

5. Each of the WMLP Debtors is a direct or indirect subsidiary of Westmoreland Coal Company ("WLB").[7] The WMLP Debtors are a low-cost producer and marketer of thermal coal to large electric utilities with coal-fired power plants under long-term coal sales contracts. The WMLP Debtors focus on acquiring thermal coal reserves that they can efficiently mine with their large-scale equipment and take advantage of close customer proximity through mine-mouth power plants and strategically located rail and barge transportation.

6. WMLP, through its Debtors subsidiaries, began doing business in 1985 in Coshocton, Ohio, as a contract-mining service to a mining division of a major oil company, and transitioned into a producer of coal using its own coal reserves in 1989. WMGP is the general partner of WMLP and a wholly owned subsidiary of WLB.

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[6] *See Expedited Motion of the WMLP Debtors for Entry of an Order Authorizing and Approving the New WMLP Committee Settlement* filed on May 30, 2019 (Docket No. 1901).

[7] The term WLB Debtors refers to WLB and its Debtor-subsidiaries other than the WMLP Debtors. The term "Debtors" refers to, collectively, the WMLP Debtors and the WLB Debtors.

7. WMGP's Board of Directors has a Conflicts Committee comprised solely of independent directors (currently numbering one).

8. WMLP and its direct subsidiary Oxford Mining Company, LLC ("Oxford") are obligors under a secured term loan facility (the "WMLP Term Loan Facility") pursuant to a credit agreement, dated as of December 31, 2014, with the WMLP Secured Lenders. As of the Petition Date, there was not less than $326.8 million in total outstanding under the WMLP Term Loan Facility, which is secured by a first-lien security interest on substantially all of the assets of WMLP, Oxford, and all of the assets of WMLP's other direct and indirect subsidiaries. Other than amounts owed pursuant to the WMLP Term Loan Facility, the WMLP Debtors had no other funded debt obligations as of the Petition Date.

B. Entry of the Order Conditionally Approving the Disclosure Statement

9. On March 18, 2019, the Bankruptcy Court entered the *Order (I) Conditionally Approving the Adequacy of the WMLP Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the WMLP Plan, (III) Approving the Form of Various Ballots and Notices in Connection Therewith, and (IV) Approving the Scheduling of Certain Dates in Connection with Confirmation of the WMLP Plan* (the "Disclosure Statement Order") (Docket No. 1620) which, among other things, conditionally approved the Disclosure Statement, and, among other things, the proposed procedures for solicitation of votes on the Plan and related notices, forms and ballots (the "Solicitation Packages").

10. The Claims and Noticing Agent appointed in these Chapter 11 Cases—Donlin, Recano & Company, Inc.—distributed the Solicitation Packages in accordance with the Disclosure Statement Order.[8]

11. The deadline for all Holders of Claims entitled to vote on the Plan to cast their Ballots is June 3, 2019 at 5:00 p.m. (Prevailing Eastern Time) (the "Voting Deadline").[9]

12. As required by section 1126 of the Bankruptcy Code, the WMLP Debtors solicited votes from the Holders of Claims in Class 2 (the "Voting Class"), with all other Classes of Claims and Interests being deemed to either accept or reject the Plan, as applicable, pursuant to sections 1126(f) and 1126(g) of the Bankruptcy Code. The WMLP Debtors did not solicit votes on the Plan from Holders of Claims and Interests in Non-Voting Classes (as defined in the Disclosure Statement Order). In lieu of a Solicitation Package, the Holders of Claims and Interests in the Non-Voting Classes received the Combined Hearing Notice, the Presumed to Accept Notice or the Deemed to Reject Notice, and the Opt-Out Form (each as defined in the Disclosure Statement Order). The Opt-Out Form provided instructions on how to opt-out of third party releases contained in Article VII of the Plan.

13. While the Voting Deadline has not yet occurred at the time of filing of this memorandum of law, based on preliminary discussions with the relevant parties, the WMLP Debtors believe that the Plan will be accepted by the Voting Class.

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8 *See Affidavit of Donlin, Recano & Company, Inc. Regarding Service of Solicitation Packages with Respect to Amended Disclosure Statement with Respect to Joint Plan of Liquidation for the WMLP Debtors* (Docket No. 1647).

9 *See Notice of WMLP Debtors' Combined Disclosure Statement and Confirmation Hearing and Modification of Certain Associated Deadlines* (Docket No. 1880).

ARGUMENT

A. Overview of the Applicable Standards

14. Section 1129(a)(1) of the Bankruptcy Code provides that a plan of liquidation may be confirmed only if the plan "complies with the applicable provisions of this title."[10] The legislative history of section 1129(a)(1) of the Bankruptcy Code indicates that the primary focus of this requirement is to ensure that the form of the plan complies with the rules regarding classification of claims and interests pursuant to section 1122 of the Bankruptcy Code and the rules regarding contents of the plan pursuant to section 1123 of the Bankruptcy Code.[11]

15. The Plan fully complies with all of the applicable provisions of the Bankruptcy Code. The WMLP Debtors thus respectfully request that the Court confirm the Plan.[12]

B. The Plan Satisfies the Applicable Confirmation Requirements

1. The Plan Complies Fully with the Applicable Provisions of the Bankruptcy Code—Section 1129(a)(1)

16. Section 1129(a)(1) of the Bankruptcy Code requires that a plan comply with the applicable provisions of the Bankruptcy Code. The principal aim of this provision is to ensure compliance with the sections of the Bankruptcy Code governing classification of claims and interests and the contents of a chapter 11 plan. Accordingly, the determination of whether the Plan complies with section 1129(a)(1) of the Bankruptcy Code requires an analysis of sections 1122 and 1123 of the Bankruptcy Code.

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[10] 11 U.S.C. § 1129(a)(1).

[11] *See* S. Rep. No. 95-989, 95th Cong. 2nd Sess. 126 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5913; H.R. Rep. No. 95-595, 95th Cong. 1st Sess. 412 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6368.

[12] A chart summarizing each of the confirmation requirements in section 1129 of the Bankruptcy Code and the Plan's compliance with those requirements (the "Compliance Chart") is attached hereto as Exhibit A and incorporated herein by reference.

a. The Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code

17. Section 1122 of the Bankruptcy Code provides that, with the exception of "convenience classes" of unsecured claims, "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."[13] Because claims only need to be "substantially" similar to be placed in the same class, plan proponents have broad discretion in determining to classify claims together.[14] Likewise, the Fifth Circuit has recognized that plan proponents may place similar claims into different classes, provided there is a good business reason to do so.[15]

18. The Plan's classification of Claims and Interests satisfies the requirements of section 1122 of the Bankruptcy Code because the Plan places Claims and Interests into seven separate Classes, with each Class differing from the Claims and Interests in each other Class in a legal or factual nature or based on other relevant criteria. Specifically, the Plan provides for the separate classification of Claims and Interests into the following Classes:

Class	Claims and Interests
Class 1	Priority Claims
Class 2	Credit Agreement Claims
Class 3	Other Secured Claims
Class 4	General Unsecured Claims
Class 5	WMLP Intercompany Claims
Class 6	WMLP Interests and WMGP Interests
Class 7	Subsidiary Interests

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13 11 U.S.C. § 1122(a).

14 *E.g., In re General Homes Corp*., 134 B.R. 853, 863 (Bankr. S.D. Tex. 1991) ("A debtor enjoys considerable flexibility in the manner in which it classifies claims.").

15 *E.g., In re Pacific Lumber Co*., 584 F.3d 229, 251 (5th Cir. 2009) ("[C]laims can be separated into different classes for 'good business reasons.'") (quoting *In re Greystone III Joint Venture*, 995 F.2d 1274, 1281 (5th Cir. 1991)).

19. The Claims and Interests assigned to each particular Class described above are substantially similar to the other Claims and Interests in such Class. In addition, valid business, legal, and factual reasons justify the separate classification of the particular Claims or Interests into the Classes created under the Plan, and no unfair discrimination exists between or among Holders of Claims and Interests. Namely, the Plan separately classifies the Claims because each Holder of such Claims or Interests may hold (or may have held) rights in the Estates legally dissimilar to the Claims or Interests in other Classes or because substantial administrative convenience resulted from such classification. For example, Claims (rights to payment) are classified separately from Interests (representing ownership in the business) and Secured Claims are classified separately from General Unsecured Claims. This classification structure serves the purpose of facilitating ease of distributions on the Effective Date of the Plan. For the foregoing reasons, the Plan satisfies section 1122 of the Bankruptcy Code.

b. The Plan Satisfies the Mandatory Requirements of Section 1123(a) of the Bankruptcy Code.

20. Section 1123(a) of the Bankruptcy Code contains seven mandatory requirements to confirm a plan, generally related to the specification of claims treatment and classification, the equal treatment of claims within classes, and the mechanics of implementing the plan.[16] The Plan fully complies with each requirement of section 1123(a) of the Bankruptcy Code for each WMLP Debtor.

21. ***Specification of Classes, Impairment, and Treatment***. The first three mandatory requirements of section 1123(a) of the Bankruptcy Code are that a plan must specify: (a) the designation of claims and interests; (b) whether such claims and interests are impaired or

[16] Section 1123(a)(8) of the Bankruptcy Code applies only in cases "in which the debtor is an individual" and is thus inapplicable to the Chapter 11 Cases. 11 U.S.C. § 1123(a)(8).

unimpaired; and (c) the precise nature of their treatment under the Plan.[17] Article II of the Plan satisfies these three requirements by:[18]

- properly designating seven Classes of Claims and Interests, as required by section 1123(a)(1) of the Bankruptcy Code;
- specifying the Classes of Claims and Interests that are Unimpaired under the Plan, as required by section 1123(a)(2) of the Bankruptcy Code; and
- specifying the treatment of each Class of Claims and Interests that is Impaired under the Plan, as required by section 1123(a)(3) of the Bankruptcy Code.

22. ***Equal Treatment***. The fourth mandatory requirement of section 1123(a) of the Bankruptcy Code is that a plan must "provide the same treatment for each claim or interest of a particular class."[19] The Plan meets this requirement because Holders of Allowed Claims and Interests will receive the same rights and treatment as other Holders of Allowed Claims and Interests within such Holders' respective Class.

23. ***Adequate Means for Implementation.*** Section 1123(a)(5) of the Bankruptcy Code requires that a plan must provide adequate means for its implementation.[20] The Plan, the Disclosure Statement, and the various documents included in the Plan Supplement provide, in detail, adequate and proper means for the Plan's execution and implementation, including appointment of a Liquidation Trustee for the purpose of, *inter alia*, administering Claims and any remaining assets, making distributions and liquidating the Etates. The precise terms governing the execution of these transactions are set forth in greater detail in the Plan, as modified, and/or

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[17] 11 U.S.C. §§ 1123(a)(1)-(3).

[18] Plan, Art. II.B-C.

[19] 11 U.S.C. § 1123(a)(4).

[20] 11 U.S.C. § 1123(a)(5). Section 1123(a)(5) of the Bankruptcy Code specifies that adequate means for implementation of a plan may include: retention by the debtor of all or part of its property; the transfer of property of the estate to one or more entities; cancelation or modification of any indenture; curing or waiving of any default; amendment of the debtor's charter; or issuance of securities for cash, for property, for existing securities, in exchange for claims or interests or for any other appropriate purpose. *Id*.

the applicable definitive documents or forms of agreements included in the Plan Supplement. Thus, the Plan satisfies section 1123(a)(5) of the Bankruptcy Code.[21]

24. ***Non-Voting Stock***. The sixth mandatory requirement of section 1123(a) of the Bankruptcy Code is that a plan must contemplate a provision in the reorganized debtor's corporate charter that prohibits the issuance of non-voting equity securities or, with respect to preferred stock, adequate provisions for the election of directors upon an event of default.[22] The Plan is a liquidating plan and does not provide for the issuance of equity or other securities by the WMLP Debtors. Accordingly, section 1123(a)(6) of the Bankruptcy Code is inapplicable.[23]

25. ***Selection of Officers and Directors***. Finally, section 1123(a)(7) of the Bankruptcy Code requires that a plan "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan."[24] As of the Plan Effective Date, the Liquidation Trustee shall administer the Liquidation Trust Assets and take all other action consistent with and as required by the Plan. The identity, compensation, and terms of the engagement of the Liquidation Trustee is part of the Liquidation Trust Agreement, included in the Plan Supplement. As required by section 1123(a)(7), the terms of the Plan are consistent with the interests of creditors and with public policy with respect to the selection of the Liquidation Trustee. Accordingly, the provisions of the Plan satisfy section 1123(a)(7) of the Bankruptcy Code.

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[21] Plan, Art. II.

[22] *See* 11 U.S.C. § 1123(a)(6).

[23] Plan, Art. II.

[24] 11 U.S.C. § 1123(a)(7).

c. Additional Plan Provisions are Appropriate

26. Section 1123(b) of the Bankruptcy Code identifies various discretionary provisions that may be included in a chapter 11 plan, provided they are "not inconsistent with" the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1123(b)(6).

27. Section 1123(b)(1) of the Bankruptcy Code provides that a plan "may impair or leave unimpaired any class of claims, secured or unsecured, or of interests." Section II.C of the Plan provides for the impairment or unimpairment of Classes of Claims and Interests.

28. Section 1123(b)(2) of the Bankruptcy Code provides that a plan may provide for the assumption, assumption and assignment or rejection of executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code. Section IV.A of the Plan provides that, on the Effective Date, each Executory Contract and Unexpired Lease not previously rejected, assumed or assumed and assigned shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code. The treatment of Executory Contracts and Unexpired Leases in the Plan is authorized by, and is consistent with, section 1123(b)(2) of the Bankruptcy Code.

29. Section 1123(b)(3)(A) of the Bankruptcy Code allows a plan to provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." As permitted by section 1123(b)(3)(A), Section VII.F.4.a of the Plan provides for a release of claims and causes of actions owned by the WMLP Debtors against the Released Parties.

30. The Plan contemplates the sale, transfer, assignment or abandonment of the WMLP Debtors' remaining property in accordance with the terms set forth in the Liquidation Trust Agreement. Therefore, it satisfies section 1123(b)(4) of the Bankruptcy Code.

31. Section 1123(b)(5) of the Bankruptcy Code provides that a plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real

property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims." As set forth in Section II.C of the Plan, the Plan modifies the rights of Holders of Claims and Interests in Classes 2, 4, 5 and 6. The Plan leaves unaffected the rights of Holders of Claims in Classes 1, 3 and 7.

32. Section 1123(b)(6) of the Bankruptcy Code is a "catchall" provision that permits inclusion in a plan of any appropriate provision as long as such provision is not inconsistent with the Bankruptcy Code. As discussed in further detail below, the Plan contains certain release and exculpation provisions that are consistent with the applicable provisions of the Bankruptcy Code and relevant case law.[25] Further, the Plan provides that the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, and related to the Chapter 11 Cases.[26] These provisions are consistent with the applicable provisions of the Bankruptcy Code and should be approved as integral parts of the Plan.

33. Based upon the foregoing, the Plan complies fully with the requirements of sections 1122 and 1123, as well as with all other provisions of the Bankruptcy Code, and thus satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

2. The WMLP Debtors Have Complied Fully with the Applicable Provisions of the Bankruptcy Code—Section 1129(a)(2)

34. Section 1129(a)(2) of the Bankruptcy Code requires a plan proponent to comply with applicable provisions of the Bankruptcy Code. Case law and legislative history indicate that this section principally reflects the disclosure and solicitation requirements of section 1125

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25 *See* Plan Art. VII.F.

26 *See* Plan Art. VIII.

of the Bankruptcy Code,[27] which prohibits the solicitation of plan votes without a court-approved disclosure statement.[28]

a. The WMLP Debtors Complied with Section 1125 of the Bankruptcy Code

35. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a chapter 11 plan "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information."[29] Section 1125 ensures that parties in interest are fully informed regarding the debtor's condition so that they may make an informed decision whether to approve or reject the plan.[30]

36. Section 1125 is satisfied here. Before the WMLP Debtors solicited votes on the Plan, the Bankruptcy Court conditionally approved the Disclosure Statement in accordance with section 1125(a)(1) of the Bankruptcy Code.[31] The Bankruptcy Court also approved the contents of the Solicitation Packages provided to Holders of Claims and Interests entitled to vote on the Plan, the non-voting materials provided to parties not entitled to vote on the Plan, and the relevant dates for voting and objecting to the Plan.[32] The WMLP Debtors, through their Claims and Noticing Agent, complied with the content and delivery requirements of the Disclosure

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[27] *See In re Cypresswood Land Partners, I*, 409 B.R. 396, 424 (Bankr. S.D. Tex. 2009) ("Bankruptcy courts limit their inquiry under § 1129(a)(2) to ensuring that the plan proponent has complied with the solicitation and disclosure requirements of § 1125.").

[28] 11 U.S.C. § 1125(b).

[29] *Id.*

[30] *See, e.g., Momentum Mfg. Corp. v. Emp. Creditors Comm.* (*In re Momentum Mfg. Corp.*), 25 F.3d 1132, 1136 (2d Cir. 1994) (finding that section 1125 of the Bankruptcy Code obliges a debtor to engage in full and fair disclosure that would enable a hypothetical reasonable investor to make an informed judgment about the plan).

[31] *See generally* Disclosure Statement Order.

[32] *See id.*

Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code.[33] The WMLP Debtors also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. Here, the WMLP Debtors caused the Disclosure Statement to be transmitted to all parties entitled to vote on the Plan in accordance with the Disclosure Statement Order.[34] Accordingly, the WMLP Debtors submit that they have complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order.

b. The WMLP Debtors Complied with Section 1126 of the Bankruptcy Code

37. Section 1126 of the Bankruptcy Code provides that only holders of allowed claims and equity interests in impaired classes that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject a plan.[35]

38. Pursuant to section 1126(f) of the Bankruptcy Code, Holders of Claims in Class 1 (Other Priority Claims), Class 3 (Other Secured Claims), and Class 7 (Subsidiary Interests) (collectively, the "Deemed Accepting Classes") are Unimpaired and conclusively presumed to have accepted the Plan. Although the WMLP Debtors did not solicit votes from the Deemed Accepting Classes, the WMLP Debtors, where applicable, mailed Holders in such Classes a Confirmation Hearing Notice, a Notice of Non-Voting Status, and an Opt-Out Form (each as defined in the Disclosure Statement Order) as required by the Disclosure Statement Order.

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[33] *See generally* Affidavit of Donlin, Recano & Company, Inc. Regarding Service of Solicitation Packages with Respect to Amended Disclosure Statement to Amended Disclosure Statement with Respect to Joint Plan of Liquidation for the WMLP Debtors (Docket No. 1647); Donlin, Recano & Company Affidavit of Service (Docket No. 1818), and Donlin, Recano & Company Supplemental Affidavit of Service (Docket No. 1838) (the "Solicitation Affidavits").

[34] *See id.*

[35] *See* 11 U.S.C. § 1126

39. Under section 1126(g) of the Bankruptcy Code, the Holders, if any, of Claims and Interests in Class 4 (General Unsecured Claims), Class 5 (WMLP Intercompany Claims), and Class 6 (WMLP Interests and WMGP Interests) (collectively, the "Deemed Rejecting Classes") will not receive any recovery under the Plan and are therefore deemed to conclusively reject the Plan. Although the WMLP Debtors did not solicit votes from Holders of Claims or Interests in the Deemed Rejecting Classes, the WMLP Debtors mailed them a Confirmation Hearing Notice, a Notice of Non-Voting Status, and an Opt-Out Form (each as defined in the Disclosure Statement Order) as required by the Disclosure Statement Order.

40. The WMLP Debtors solicited votes only from holders of Claims in the Voting Class (Class 2—Credit Agreement Claims) because that Class is impaired and entitled to receive a distribution under the Plan.[36]

41. With respect to the Voting Class, section 1126(c) of the Bankruptcy Code provides that:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of [section 1126], that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of [section 1126], that have accepted or rejected such plan.

11 U.S.C. § 1126(c).

42. The Voting Deadline is currently scheduled for June 3, 2019 at 5:00 p.m. (prevailing Central Time).[37] While the Voting Deadline has not yet passed at the time of filing of this memorandum of brief, based on preliminary discussions with the Holders of Claims in

[36] *See* Plan, Art. II; *see* generally Solicitation Affidavits.

[37] *See Notice of WMLP Debtors' Combined Disclosure Statement and Confirmation Hearing and Modification of Certain Associated Deadlines* (Docket No. 1880).

Class 2, the WMLP Debtors believe the Plan will be accepted by the requisite number of Holders of Claims in the Voting Class.

43. Based upon the foregoing, the WMLP Debtors' solicitation of votes with respect to the Plan was undertaken in conformity with sections 1125 and 1126 of the Bankruptcy Code and the Disclosure Statement Order, and the WMLP Debtors acted in good faith at all times with respect to the solicitation of votes on the Plan. The WMLP Debtors, therefore, have complied with applicable provisions of the Bankruptcy Code and have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

3. The WMLP Debtors Proposed the Plan in Good Faith and Not by Any Means Forbidden by Law—Section 1129(a)(3)

44. Section 1129(a)(3) of the Bankruptcy Code requires a plan proponent to propose the plan "in good faith and not by any means forbidden by law."[38] In assessing the good faith standard, courts in the Fifth Circuit consider whether a plan was proposed with "the legitimate and honest purpose to reorganize and has a reasonable hope of success."[39] A plan must also achieve a result consistent with the Bankruptcy Code.[40] Whether a plan is proposed in good faith must be determined in light of the totality of the circumstances of the cases.[41]

45. The WMLP Debtors' good faith is evident from the facts and record of the Chapter 11 Cases, the Disclosure Statement and the record of the Confirmation Hearing. The WMLP Debtors have proposed the Plan in good faith and not by any means forbidden by law, with the legitimate and honest purposes of liquidating the WMLP Debtors' Estates in as

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38 11 U.S.C. § 1129(a)(3)

39 *See, e.g., In re Sun Country Dev., Inc.*, 764 F.2d 406, 408 (5th Cir. 1985).

40 *See In re Block Shim Dev. Co.-Irving*, 939 F.2d 289, 292 (5th Cir. 1991).

41 *See, e.g., id.; Pub. Fin. Corp. v. Freeman*, 712 F.2d 219, 221 (5th Cir. 1983); *In re Cypresswood Land Partners, I*, 409 B.R. at 425.

organized and controlled a fashion as possible in the interests of the stakeholders. The Plan is the culmination of these efforts and follows extensive arm's-length negotiations among the WMLP Debtors, the WLB Debtors, the WMLP Secured Parties, the Conflicts Committee, the Creditors' Committee and other interested parties. Importantly, the Plan is supported by the WMLP Debtors' key creditor constituencies, including the Creditors' Committee and WMLP Secured Parties. The totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan and the Disclosure Statement support Confirmation of the Plan.

46. The Plan is the best transaction to facilitate the orderly liquidation of the WMLP Debtors following their sale efforts and will allow the WMLP Debtors to exit chapter 11 in an expeditious manner. The Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate purpose of allowing the WMLP Debtors to implement the transactions contemplated under the Plan. Accordingly, the requirements of section 1129(a)(3) of the Bankruptcy Code are satisfied.

4. The Plan Provides that the WMLP Debtors' Payment of Professional Fees and Expenses are Subject to Bankruptcy Court Approval—Section 1129(a)(4)

47. Section 1129(a)(4) of the Bankruptcy Code requires that all payments made by the debtor, the plan proponent or by a person issuing securities or acquiring property under a plan for services or for costs and expenses incurred in connection with the case or the plan, be approved by the Court as reasonable.[42] The Fifth Circuit has held that this is a "relatively open-ended standard" that involves a case-by-case inquiry and, under appropriate circumstances, does not necessarily require that a bankruptcy court review the amount charged.[43] As one court

[42] 11 U.S.C. § 1129(a)(4)

[43] *See, e.g., In re Cajun Elec. Power Coop., Inc.*, 150 F.3d 503, 517 (5th Cir. 1998) ("What constitutes a reasonable payment will clearly vary from case to case and, among other things, will hinge to some degree

explained, as to routine legal fees and expenses which have been approved as reasonable in the first instance, "the court will ordinarily have little reason to inquire further with respect to the amount charged."[44]

48. Pursuant to this Court's *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* (Docket No. 495), entered on November 14, 2018, this Court has authorized and approved on an interim basis the payment of certain fees and expenses of Professionals retained in these Chapter 11 Cases. All such fees and expenses, as well as all other accrued fees and expenses of Professionals through the Effective Date, remain subject to final review for reasonableness by the Court in accordance with Section II.A.1.c.i of the Plan.[45] Moreover, Section II.A.1.a further provides for the payment of Administrative Expense Claims, and makes all such payments subject to Bankruptcy Court approval and the standards of the Bankruptcy Code, including the claims process.[46]

5. The WMLP Debtors Have Complied with the Bankruptcy Code's Governance Disclosure Requirement—Section 1129(a)(5)

49. The Bankruptcy Code requires the proponent of a plan to disclose the identity and affiliation of any individual proposed to serve as a director or officer of the debtor or a successor to the debtor under the plan.[47] It further requires that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy.[48] Lastly, the Bankruptcy Code requires a plan proponent to disclose the

upon who makes the payments at issue, who receives those payments, and whether the payments are made from assets of the estate.").

[44] *Id.*

[45] Plan, Art. II.A.1.c.i.

[46] Plan, Art. II.A.1.a.

[47] 11 U.S.C. § 1129(a)(5)(A)(i)

[48] 11 U.S.C. § 1129(a)(5)(A)(ii).

identity of insiders to be retained by the reorganized debtor and the nature of any compensation for such insider.[49] Courts have held that these provisions are meant to ensure that the post-confirmation governance of a reorganized debtor is in "good hands."[50]

50. In accordance with Article IV.M of the Plan, WMLP and WMGP will cease to exist on the Effective Date, and all existing articles of organization and similar constituent documents will be cancelled, effective as of the Effective Date. Each Subsidiary WMLP Debtor will also cease to exist upon its dissolution pursuant to the Plan. Consequently, as of the Effective Date, all directors and officers of the WMLP Debtors shall be discharged, and all such appointments rescinded. Therefore, the requirements imposed by section 1129(a)(5) of the Bankruptcy Code are inapplicable to the Plan. Nevertheless, the WMLP Debtors have disclosed the identity, compensation, and terms of the engagement of the Liquidation Trustee appointed to administer the Liquidation Trust. Accordingly, the WMLP Debtors have satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code to the extent they may be applicable in these Chapter 11 Cases.

6. The Plan Does Not Require Government Regulatory Approval of Rate Changes—Section 1129(a)(6)

51. Section 1129(a)(6) of the Bankruptcy Code permits confirmation only if any regulatory commission that has or will have jurisdiction over a debtor after confirmation has approved any rate change provided for in the plan. This provision is inapplicable to these Chapter 11 Cases.

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[49] 11 U.S.C. § 1129(a)(5)(B).

[50] *See In re Landing Assocs., Ltd.*, 157 B.R. 791, 817 (Bankr. W.D. Tex. 1993) ("In order to lodge a valid objection under § 1129(a)(5), a creditor must show that a debtor's management is unfit or that the continuance of this management post-confirmation will prejudice the creditors." (citation omitted)).

7. The Plan Is in the Best Interests of Holders of Claims and Interests— Section 1129(a)(7)

52. The best interests of creditors test under the Bankruptcy Code requires that, "[w]ith respect to each impaired class of claims or interests," members of such class that have not accepted the plan will receive at least as much as they would in a hypothetical chapter 7 liquidation.[51] This so-called best interests test applies to each non-consenting member of an impaired class, and is generally satisfied through a comparison of the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation of that debtor's estate against the estimated recoveries under that debtor's chapter 11 plan.[52]

53. The Plan satisfies the best interests test with respect to Holders of Claims and Interests that did not vote to accept the Plan, including Holders in the Deemed Rejecting Classes. To demonstrate compliance with section 1129(a)(7) of the Bankruptcy Code, the WMLP Debtors, with the assistance of their restructuring advisor, A&M, analyzed the probable result of a hypothetical chapter 7 liquidation of the WMLP Debtors' assets.[53] As will be apparent from the evidence presented at the Confirmation Hearing, the recoveries expected to be available to Holders of Allowed Claims under the Plan will be greater than the recoveries expected to be available in a hypothetical chapter 7 liquidation.

54. Substantially all of the WMLP Debtors' business has been liquidated through the various sale transactions discussed in the Disclosure Statement, and the Plan effects a liquidation

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[51] 11 U.S.C. § 1129(a)(7).

[52] *Bank of Am. Nat'l Trust & Savs. Ass'n v. 203 N. LaSalle St. P'ship,* 526 U.S. 434, 441 n.13 (1999) ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."); *In re Texas Extrusion Corp*., 844 F.2d 1142, 1159 n.23 (5th Cir. 1988) (stating that under section 1129(a)(7) of the Bankruptcy Code a bankruptcy court was required to determine whether impaired claims would receive no less under a reorganization than through a liquidation).

[53] Disclosure Statement, Art. VI.

of the remaining assets of the WMLP Debtors' Estates. Although a chapter 7 liquidation would achieve a substantially similar outcome, liquidating the WMLP Debtors' Estates under the Plan would likely provide Holders of Allowed Claims with a larger, more timely recovery due to the potential for delay and administrative friction that would result from converting these Chapter 11 Cases to a chapter 7 liquidation at this stage of the proceedings. If these Chapter 11 Cases are converted, a chapter 7 trustee would be appointed to effectuate a liquidation of the WMLP Debtors' Estates. Appointment of a chapter 7 trustee would cause delay and additional administrative fees because the trustee would have to gain familiarity with the remaining assets of the WMLP Debtors' Estates.[54] In addition, a chapter 7 trustee would likely not have the technical expertise or familiarity with the WMLP Debtors' business that the WMLP Debtors and their Professionals have in proposing the Plan.

55. Because no Holder of Claims or Interests would receive more in a chapter 7 liquidation than it would receive under the Plan, the Plan satisfies the best interests test.

8. The Plan Satisfies the Voting Requirements—Section 1129(a)(8).

56. The Bankruptcy Code generally requires that each class of claims or interests must either accept the plan or be unimpaired under the plan.[55] Where certain impaired classes of claims or interests do not accept the plan, and, therefore, the requirements of section 1129(a)(8) of the Bankruptcy Code are not satisfied, the plan nevertheless may be confirmed over such

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[54] *See* 11 U.S.C. § 326(a) (providing for compensation of a chapter 7 trustee up to three percent of the value of the assets); 11 U.S.C. § 503(b)(2) (providing administrative expense status for compensation and expenses of a chapter 7 trustee and such trustee's professionals).

[55] 11 U.S.C. § 1129(a)(8). A class of impaired claims accepts a plan if holders of at least two-thirds in dollar amount and more than half in number of the claims in that class actually vote to accept the plan. 11 U.S.C. § 1126(c). A class that is not impaired under a plan, and the creditors in that class, are conclusively presumed to have accepted the plan. 11 U.S.C. § 1126(f). A class is deemed to have rejected a plan if the plan provides that the holders of claims or interests in that class do not receive or retain any property under the plan on account of such claims or interests. 11 U.S.C. § 1126(g).

nonacceptance pursuant to the "cramdown" provisions of section 1129(b)(1) of the Bankruptcy Code.[56]

57. Here, the Deemed Accepting Classes are Unimpaired under the Plan and are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Nevertheless, because the Plan has not been accepted by the Deemed Rejecting Classes, the WMLP Debtors seek Confirmation under section 1129(b), rather than section 1129(a)(8), of the Bankruptcy Code. As described in more detail below, the WMLP Debtors meet the "cramdown" requirements under section 1129(b) of the Bankruptcy Code necessary to obtain Confirmation of the Plan here.

9. The Plan Complies With Statutorily Mandated Treatment of Administrative and Priority Tax Claims—Section 1129(a)(9)

58. The Bankruptcy Code generally requires that claims entitled to administrative priority must be repaid in full in cash or receive certain other specified treatment.[57] Here, the Plan treats Allowed Administrative Claims, Priority Tax Claims, and Other Priority Claims in accordance with the Bankruptcy Code, rendering them Unimpaired.[58] Therefore, the WMLP Debtors submit that the Plan complies with section 1129(a)(9) of the Bankruptcy Code.

10. At the Time of Confirmation Hearing, at Least One Impaired Class of Claims Has Accepted the Plan, Excluding the Acceptances of Insiders—Section 1129(a)(10)

59. Section 1129(a)(10) of the Bankruptcy Code provides that, to the extent there is an impaired class of claims, at least one impaired class of claims must accept the plan, "without including any acceptance of the plan by any insider," as an alternative to the requirement under

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[56] 11 U.S.C. § 1129(b).

[57] 11 U.S.C. § 1129(a)(9).

[58] Plan, Art. II.

section 1129(a)(8) of the Bankruptcy Code that each class of claims or interests must either accept the plan or be unimpaired under the plan. The WMLP Debtors believe that at the time of Confirmation Hearing, Class 2 will have voted to accept the Plan, exclusive of any acceptances by insiders. Accordingly, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code, and no party has asserted otherwise.

11. The Plan Is Feasible—Section 1129(a)(11)

60. Section 1129(a)(11) of the Bankruptcy Code permits confirmation of a plan if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor . . . unless such liquidation or reorganization is proposed in the plan." In the context of liquidating plans, courts have held that debtors do not need to establish feasibility when a plan contemplates a liquidation of the debtor,[59] because section 1129(a)(11) of the Bankruptcy Code is satisfied where "such liquidation . . . is proposed in the plan."[60] In such cases, a plan proponent "need only demonstrate that there exists a reasonable probability that the plan provisions can be performed,"[61] and "speculative prospects of failure cannot defeat feasibility."[62]

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[59] *See, e.g., In re Heritage Org., L.L.C.*, 375 B.R. 230, 311 (Bankr. N.D. Tex. 2007); *In re Drexel Burnham Lambert Grp., Inc*., 138 B.R. 723, 772 (Bankr. S.D.N.Y. 1992) ("Section 1129(a)(11) requires that a plan must be 'feasible,' that is, if the plan is not a liquidating plan, a Court must determine that a debtor, or its successor under a plan, is not likely to require liquidation or further financial reorganization, except as provided under a plan." (emphasis added)); *In re Travelstead*, 227 B.R. 638, 652 (Bankr. D. Md. 1998); *In re 47th and Belleview Partners*, 95 B.R. 117, 120 (Bankr. W.D. Mo. 1988); *In re Pero Bros. Farms, Inc*., 90 B.R. 562, 563 (Bankr S.D. Fla. 1988); *In re Statepark Bldg. Grp*., No. 04-33916 (HDH), 2005 WL 6443615, at *9 (Bankr. N.D. Tex. May 19, 2005) ("The Plan is a liquidating plan and, therefore, satisfies the feasibility requirement of 11 U.S.C. § 1129(a)(11).").

[60] *In re Heritage Org., L.L.C.*, 375 B.R. at 311 (citing *In re Cellular Info. Sys., Inc*., 171 B.R. 926 (Bankr. S.D.N.Y. 1994)).

[61] *In re Idearc Inc*., 423 B.R. 138, 167 (Bankr. N.D. Tex. 2009), subsequently aff'd sub nom. 662 F.3d 315 (5th Cir. 2011) (citing *Fin. Sec. Assurance, Inc. v. T-H New Orleans Ltd. P'ship* (*In re T-H New Orleans Ltd. P'ship*), 116 F.3d 790, 801 (5th Cir. 1997)).

[62] *In re Couture Hotel Corp*., 536 B.R. 712, 737 (Bankr. N.D. Tex. 2015) (quoting *In re Cajun Elec. Power Co-op*., *Inc*., 230 B.R. 715, 745 (Bankr. M.D. La. 1999)).

61. In the context of a liquidating plan, feasibility is established by demonstrating that the debtor is able to satisfy the conditions precedent to the Effective Date and otherwise has sufficient funds to meet its post-Confirmation obligations to pay for the costs of administering and fully consummating the Plan and closing the chapter 11 cases.[63] The Plan provides that on the Effective Date WMLP Debtors' remaining assets would be transferred to a Liquidation Trust for purposes of liquidating the Liquidation Trust Assets, resolving all Disputed Claims, making all Distributions to holders of Allowed Claims in accordance with the terms of this Plan and otherwise implementing this Plan. The WMLP Debtors believe that there are sufficient funds to administer and consummate the Plan and to close these Chapter 11 Cases and the conditions precedent to the Effective Date will be satisfied. Accordingly, the WMLP Debtors believe that the Plan has more than a reasonable likelihood of success and satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code.

12. Section 1129(a)(12)—The Plan Provides for the Payment of Fees

62. Section 1129(a)(12) of the Bankruptcy Code requires that, as a condition precedent to the confirmation of a chapter 11 plan, "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan."[64] The Plan complies with section 1129(a)(12) by providing in Section II.A.1.b. that all fees payable pursuant to 28 U.S.C. § 1930 shall be paid by the WMLP Debtors or the Liquidation Trustee, as applicable, until the Chapter 11 Cases are closed. Accordingly, the Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code.

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63 *See In re Finlay Enterprises, Inc.*, 2010 WL 6580629, at 2-6 (Bankr. S.D.N.Y. May 18, 2010).

64 11 U.S.C. § 1129(a)(12).

13. Sections 1129(a)(13) Through 1129(a)(16) of the Bankruptcy Code Do Not Apply to the Plan

63. A number of the Bankruptcy Code's confirmation requirements are inapplicable to the Plan. The WMLP Debtors do not owe any retiree obligations, domestic support obligations, are not individuals, and are not nonprofit corporations. Therefore, sections 1129(a)(13), 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to these Chapter 11 Cases.

14. Section 1129(b)—The Plan Satisfies the "Cramdown" Requirements for Confirmation

64. Section 1129(b) of the Bankruptcy Code provides a mechanism for confirmation of a plan in circumstances where not all impaired classes of claims and interests accept a plan, as required by section 1129(a)(8). This mechanism, "cram down," is set forth in Section 1129(b):

> [I]f all of the applicable requirements of [section 1129(a) of the Bankruptcy Code] other than [the requirement contained in section 1129(a)(8) that a plan must be accepted by all impaired classes] are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(1).

65. Thus, under section 1129(b), the Bankruptcy Court may "cram down" a plan over the rejection or a deemed rejection of a plan by an impaired class of claims or interests as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such class.[65]

a. The Plan Does Not Discriminate Unfairly

66. The unfair discrimination standard of section 1129(b)(1) ensures that a plan does not unfairly discriminate against a dissenting class with respect to the value it will receive under

[65] 11 U.S.C. § 1129(b).

a plan when compared to the value given to all other similarly situated classes.[66] The courts generally consider all facts and circumstances of the case in determining whether unfair discrimination exists.[67] Generally speaking, section 1129(b)(1) of the Bankruptcy Code is intended to ensure that a dissenting class will receive relative value equal to the value given to all other similarly situated classes.[68] Thus a plan proponent may not segregate two similar claims or groups of claims into separate classes and provide disparate treatment for those classes. Under the foregoing standards, the Plan does not "discriminate unfairly" against any Holders of Claims and Interests in Classes that are deemed to reject the plan (the "Rejecting Classes"). The treatment of Holders in the Rejecting Classes is proper because all similarly situated Holders of Claims and Interests will receive the same treatment.

b. The Plan is Fair and Equitable

67. Section 1129(b)(2)(B) of the Bankruptcy Code states that a plan is "fair and equitable" with respect to a class of unsecured claims if "the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property."[69] Section 1129(b)(2)(C) further provides that a plan is fair and equitable with respect to a class of interests if the plan provides that "the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on

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66 *Bank of Am. Nat'l Trust & Savs. Ass'n,* 526 U.S. at 441-42; *In re Mirant Corp.*, 348 B.R. 725, 738 (Bankr. N.D. Tex. 2006).

67 *See In re Kolton*, No. 89-53425-C (LMC), 1990 WL 87007 at *5 (Bankr. W.D. Tex. Apr. 4, 1990) ("'[W]hether or not a particular plan does [unfairly] discriminate is to be determined on a case-by-case basis'") (quoting *In re Bowles*, 48 B.R. 502, 507 (Bankr. E.D. Va. 1985)); *see also In re Freymiller Trucking, Inc.*, 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) (holding that a determination of unfair discrimination requires a court to "consider all aspects of the case and the totality of all the circumstances").

68 *See In re Idearc Inc.*, 423 B.R. at 171, ("[T]he unfair discrimination standard prevents creditors and equity interest holders with similar legal rights from receiving materially different treatment under a proposed plan without compelling justifications for doing so." (citation omitted)); *Liberty Nat'l Enters. v. Ambanc La Mesa Ltd. P'ship (In re Ambanc La Mesa Ltd. P'ship)*, 115 F.3d 650, 654 (9th Cir. 1997).

69 11 U.S.C. § 1129(b)(2)(B).

account of such junior interest any property."[70] Under the Plan, the rule is satisfied with respect to the Holders of unsecured claims, as no claims or interests junior to such Classes will receive or retain any property. Similarly, the rule is satisfied with respect to the Holders of Interest, as no interests junior to the Class of Interests will receive or retain any property under the Plan.

68. The "fair and equitable" requirement also incorporates a rule that a class of senior creditors may not be paid more than the full amount of their claims. The rule is satisfied as no class of creditors senior to equity holders will receive more than payment in full on their claims. Accordingly, the Plan is "fair and equitable" with respect to all Impaired Classes of Claims and Interests and satisfies section 1129(b) of the Bankruptcy Code.

15. Section 1129(c)—The Plan is the Only Plan Filed in These Chapter 11 Cases

69. Section 1129(c) of the Bankruptcy Code provides that, with a limited exception, a bankruptcy court may only confirm one plan. The Plan is the only plan that has been filed in the Chapter 11 Cases with respect to the WMLP Debtors. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code are satisfied.

16. Section 1129(d)—The Principal Purpose of the Plan is Not the Avoidance of Taxes or the Application of Section 5 of the Securities Act

70. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933, thereby satisfying section 1129(d) of the Bankruptcy Code.

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[70] 11 U.S.C. § 1129(b)(2)(C).

C. The Plan's Release, Exculpation and Injunction Provisions are Appropriate and Should be Approved

1. The Debtor Release is Proper

71. Section 1123(b)(3)(A) of the Bankruptcy Code provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." Accordingly, pursuant to section 1123(b)(3)(A), the WMLP Debtors may release estate causes of action as consideration for concessions made by their various stakeholders pursuant to the Plan. Section VII.F.4.a of the Plan provides for releases by the WMLP Debtors of certain Liabilities (the "Debtor Release") against the Released Parties.[71]

72. In the Fifth Circuit, the overarching question for determining the permissibility of releasing claims held by a debtor is whether the release is fair, equitable, and in the best interest of the estate.[72] The first prong is generally interpreted to required compliance with the Bankruptcy Code's absolute priority rule.[73]Courts generally determine whether a release is "in the best interest of the estate" by reference to the following factors:

- the probability of success of litigation;
- the complexity and likely duration of the litigation, any attendant expense, inconvenience, or delay, and possible problems collecting a judgment;
- the interest of creditors with proper deference to their reasonable views; and

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71 Pursuant to Section I.A, "'Released Parties' means, collectively, and in each case, in their respective capacities as such: (a) the WMLP Debtors; (b) the WLB Debtors; (c) the WLB Purchaser; (d) the Kemmerer Purchaser; (e) the WLB Consenting Stakeholders; (f) Holders of WLB First Lien Claims; (g) Holders of WLB Bridge Loan Claims; (h) the WLB DIP Lenders; (i) the WLB Bridge Loan Agent; (j) the WLB Credit Agreement Agent; (k) the WLB DIP Agent; (l) the WLB First Lien Notes Trustee; (m) the WMLP Secured Parties; (n) the Creditors' Committee, the members thereof, and their respective professionals (solely in their capacity as such); (o) the Conflicts Committee; (p) each current and former Affiliate of each Entity in clauses (a) through (o); and (q) with respect to each Entity in clauses (a) through (p), each such Entity's Representatives."

72 *In re Mirant*, 348 B.R. at 738*; see also In re Heritage*, 375 B.R. at 259.

73 *In re Mirant*, 348 B.R. at 738.

- the extent to which the settlement is truly the product of arm's-length negotiations.[74]

73. Ultimately, courts afford debtors some discretion in determining for themselves the appropriateness of granting plan releases of estate causes of action.[75]

74. The Debtor Release is an integral part of the Plan, complies with the absolute priority rule and is in the best interest of the Estates. Pursuit of any claims included in the Debtor Release is not in the best interest of the Estates. The WMLP Debtors do not believe that they have any viable claims of the sort that are being released against the Released Parties and believe the costs of pursuing claims that are being released would outweigh any potential recovery or other benefit. Additionally, no Holders of Claims or Interests objected to the Debtor Release. Further, the Debtor Release, like all elements of the Plan, was negotiated by sophisticated parties represented by able counsel and financial advisors and is the result of arm's-length negotiations.

75. The Debtor Release is crucial to the success of the Plan, which embodies the settlement and resolution of certain claims and reflects contributions, concessions and compromises made by the Released Parties throughout the Chapter 11 Cases. Accordingly, the Debtor Release is fair, equitable, in the best interest of the WMLP Debtors and their estates and justified under Fifth Circuit law and precedent. The Court should therefore approve the Debtor Release as set forth in the Plan.

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74 *Id.* at 739-40 (citing *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Co-op. (In re Cajun Elec. Power Co-op.)*, 119 F.3d 349, 355–56 (5th Cir. 1997)).

75 *See In re General Homes*, 134 B.R. at 861 ("The court concludes that such a release is within the discretion of the Debtor.").

2. The Third-Party Release is Consensual, Appropriate, and Complies with the Bankruptcy Code

76. The Fifth Circuit has a limited prohibition against third-party releases,[76] unless such releases are consensual.[77] Pursuant to the Plan, all parties, including those that were not entitled to vote on the Plan, had the opportunity to "opt out" of the releases. Thus, third party release provisions of Article VII.F.4.b only apply to parties voting to accept the Plan and parties that do not affirmatively opt out of the Third-Party Release.[78] Courts in the Fifth Circuit routinely approve such consensual third-party releases. In fact, the WLB Plan, which was confirmed by this Court recently, contained a similar "opt-out" structure with respect to third party releases.[79]

77. Moreover, the Third-Party Release is supported by adequate consideration. The Third-Party Release is reciprocal – i.e., every party approving the Third-Party Release is both a Released Party and a Releasing Party.[80] The reciprocal releases serve as mutual consideration.

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[76] *See Ad Hoc Group of Vitro Noteholders v. Vitro S.A.B. de C.V. (In re Vitro S.A.B. de C.V.)*, 701 F.3d 1031, 1059 (5th Cir. 2012); *In re Pacific Lumber Co.*, 584 F.3d 229, 252 (5th Cir. 2009); *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 760-61 (5th Cir. 1995).

[77] *See, e.g., In re Pilgrim's Pride Corp.*, No. 08-45664 (DML), 2010 WL 200000, at *5 (Bankr. N.D. Tex. Jan. 14, 2010) (under *Pacific Lumber*, "the court may not, *over objection*, approve through confirmation of the Plan third-party protections" (emphasis added)). *See also In re Camp Arrowhead, Ltd.*, 451 B.R. 678, 701-2 (Bankr. W.D. Tex. 2011) ("[T]he Fifth Circuit does allow permanent injunctions *so long as there is consent*." (emphasis in original)).

[78] Plan, Art. VII.F.4.b; *see also* Disclosure Statement Order.

[79] *See Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates* (Docket No. 1561).

[80] Pursuant to Section I.A, "'Releasing Parties' means collectively, and in each case, in their respective capacities as such: (a) the WMLP Debtors; (b) the WLB Debtors; (c) the WLB Purchaser; (d) the Kemmerer Purchaser; (e) the WLB Consenting Stakeholders; (f) Holders of WLB First Lien Claims; (g) Holders of WLB Bridge Loan Claims; (h) the WLB DIP Lenders; (i) the WLB Bridge Loan Agent; (j) the WLB Credit Agreement Agent; (k) the WLB DIP Agent; (l) the WLB First Lien Notes Trustee; (m) the WMLP Secured Parties; (n) the Creditors' Committee, the members thereof, and their respective professionals (solely in their capacity as such); (o) the Conflicts Committee; (p) all Holders of Claims and Interests that are presumed to accept this Plan and who do not opt out of the releases in this Plan; (q) all Holders of Claims and Interests who vote to accept this Plan; (r) all Holders of Claims or Interests that do not opt out of the releases in this Plan and either (i) abstain from voting on this Plan, (ii) vote to reject this Plan or (iii) are deemed to reject this Plan; (s) each current and former Affiliate of each Entity in clauses

The sufficiency of mutual releases as consideration has been recognized in this District, including, most recently, by this Court when confirming the WLB Plan.[81] Accordingly, the Third-Party Release should be approved.

3. The Exculpation Provisions are Appropriate

78. An exculpation provision "is apparently a commonplace provision in Chapter 11 plans, does not affect the liability of these parties, but rather states the standard of liability under the [Bankruptcy] Code, and thus does not come within the meaning of § 524(e)."[82]The Plan includes this commonplace provision in Section VII.F.3 (the "Exculpation Provision"), exculpating certain parties[83] that were critical to the Chapter 11 Cases, the various sales and the plan process. The Exculpation Provision does not, however, affect liability that is determined to have constituted actual fraud, willful misconduct, gross negligence, criminal conduct, malpractice, misuse of commercially sensitive confidential information for competitive purposes that causes damages, or *ultra vires* acts.[84]

79. Courts have confirmed plans providing for exculpation of non-estate fiduciaries, and the facts and circumstances of the Chapter 11 Cases warrant the inclusion of non-estate

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(a) through (r); and (t) with respect to each Entity in clauses (a) through (s), each such Entity's Representatives."

[81] *See In re iHeartMedia, Inc.*, No. 18-31274 (MI) (Bankr. S.D. Tex. Jan. 22, 2019) (approving third-party releases over SEC objection that they were unsupported by consideration); *In re Cobalt Int'l Energy, Inc.*, No. 17-36709 (MI) (Bankr. S.D. Tex. Apr. 5, 2018) (same); *Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates* (Docket No. 1561).

[82] *In re PWS Holding Corp.*, 228 F.3d 244, 245 (3d Cir. 2000).

[83] Section I.A defines the "Exculpated Parties" as, collectively and in each case in its capacity as such, "(a) the WMLP Debtors; (b) the WLB Debtors; (c) the WMLP Secured Parties; (d) the Creditors' Committee, the members thereof, and their respective professionals (solely in their capacity as such); (e) the Conflicts Committee; (f) the Kemmerer Purchaser; and (g) with respect to each of the foregoing, such Entities' current and former Affiliates, and such Entities' and their current and former Affiliates' current and former equity holders, subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals."

[84] Plan, Section VII.F.3.

fiduciaries in the Exculpation Provision here.[85]Here, each of the Exculpated Parties provided significant contributions to the Chapter 11 Cases and agreed to compromises in favor of the WMLP Debtors and their estates.

80. Exculpation for the Exculpated Parties is particularly appropriate here, where participation in the Chapter 11 Cases and negotiations related to the sales and the plan process could not have occurred without protection from liability.[86] The Exculpation Provision represents an integral piece of the overall settlement embodied by the Plan and is the product of good faith, arm's-length negotiations. The Exculpation Provision is narrowly tailored to exclude acts of fraud and gross negligence, relates only to acts or omissions in connection with, or arising out of the administration of the WMLP Debtors' chapter 11 cases and their restructuring, and ultimately inures to the benefit of only those parties that may owe fiduciary duties to the WMLP Debtors and their estates. Accordingly, the Exculpation Provision should be approved.

4. The Injunction Is Necessary and Customary

81. The injunction provisions set forth in Section VII.F.3 are necessary to effectuate and implement the release provisions and the exculpation provisions set forth in Article VII of the Plan and the compromises and settlements implemented under the Plan and throughout the

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85 *See, e.g.*, Transcript of Confirmation Hr'g on July 28, 2014 at 27, *In re FAH Liquidating Corp.*, No. 13-13087 (KG) (Docket No. 1152) (Bankr. D. Del. July 30, 2014) (overruling an objection by the United States Trustee and finding that an exculpation provision that included non-estate fiduciaries was appropriate where the non-estate fiduciary provided a "very significant contribution . . . which protects the unsecured *creditors* . . . ." and played "a particularly key role in this -- in this bankruptcy case"); Transcript of Confirmation Hr'g on January 18, 2011 at 28-29, *In re HSH Delaware GP LLC*, No. 10-10187 (MFW) (Docket No. 431) (Bankr. D. Del. Jan. 20, 2011) (explaining that an exculpation provision included prepetition and postpetition acts and omissions of, among others, non-estate fiduciaries "was appropriate under 1125(e)" and overruling the United States Trustee's objection).

86 *See, e.g.*, *Upstream Energy Servs. v. Enron Corp. (In re Enron Corp.)*, 326 B.R. 497, 503 (S.D.N.Y. 2005) (approving an exculpation provision that included non-estate fiduciaries by underscoring the alternative,"[t]o pull away this string would thus tend to unravel the entire fabric of the Plan, and would be inequitable to all those who participated in good faith to bring it into fruition.").

Chapter 11 Cases. No party has objected to the injunction provisions. Accordingly, the Court should approve these provisions.

D. The Modifications To The Plan Are Not Material And Should Be Approved

82. The Bankruptcy Code provides that a plan proponent may modify a plan "at any time" before confirmation.[87] It further provides that all stakeholders that previously have accepted a plan should also be deemed to have accepted such plan as modified.[88] The Bankruptcy Rules provide that to the extent the proposed modifications do not "adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification," the debtor is not required to seek re-solicitation of the Plan.[89]

83. Only those modifications that are "material"—i.e., modifications that "so affects a creditor or interest holder who accepted the plan that such entity, if it knew of the modification, would be likely to reconsider its acceptance"—require re-solicitation.[90]

84. Here, the WMLP Debtors had to revise the Plan as a result of their inability to close the prior Kemmerer sale to Western Coal. While the amended version of the Plan provides for a different buyer of the Kemmerer Assets, the overall structure of the Plan and the recoveries the creditors are entitled to are not materially changed. Nevertheless, the WMLP Debtors amended the Voting Deadline to allow the only Voting Class to review and vote on the amended

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87 11 U.S.C. § 1127(a).

88 11 U.S.C. § 1127(d).

89 Fed. R. Bankr. P. 3019.

90 *See In re American Solar King*, 90 B.R. 808, 824 (Bankr. W.D. Tex. 1988) (approving plan modification with de minimis effect on creditor recoveries pursuant to Bankruptcy Rule 3019); *In re R.E. Loans, LLC*, No. 11-35865 (BJH), 2012 WL 2411877 at *10 (Bankr. N.D. Tex. June 26, 2012) (finding that none of the modifications adversely changed the treatment of the claim of any creditor or the interest of any equity security holder so as to require resolicitation pursuant to Bankruptcy Rule 3019).

version of the Plan. The WMLP Debtors, however, did not re-send the Solicitation Package and re-distribute the other materials that the Holders of Claims and Interests in the Non-Voting Classes were entitled to receive, nor do the WMLP Debtors believe they are required to do so.

E. The Disclosure Statement Should Be Approved On A Final Basis

85. After notice to all creditors, no party has objected to the adequacy of the Disclosure Statement. For this reason and for the additional reasons supporting the adequacy of the Disclosure Statement as set forth in the *WMLP Debtors' Emergency Motion For Entry of an Order (I) Conditionally Approving the Adequacy of the WMLP Disclosure Statement, (II) Approving The Solicitation And Notice Procedures With Respect To Confirmation of the WMLP Plan, (III) Approving The Form Of Various Ballots And Notices In Connection Therewith; And (Iv) Approving The Scheduling Of Certain Dates In Connection With Confirmation Of The WMLP Plan* (Docket No. 1615), approval of the Disclosure Statement on a final basis as part of the Confirmation Order is appropriate.

F. The Plan Should Be Confirmed Over The Objections

86. The WMLP Debtors received a total of nine objections and two reservations of rights with respect to the proposed plan (each, an "Objection" and, together, the "Objections").[91]

[91] United States' Limited Protective Objection to the Joint Plan of Liquidation for the WMLP Debtors (Docket No. 1867) (the "United States' Objection"); Limited Objection of First Surety Corporation and Westchester Fire Insurance Company to Joint Chapter 11 Plan for the WMLP Debtors (Docket No. 1870) (the "First Surety Objection"); Limited Objection of Travelers Casualty and Surety Company of America to Joint Plan of Liquidation for the WMLP Debtors (Docket No. 1872) (the "Travelers Objection"); Statement and Reservation of Rights of Lexon Insurance Company, Sompo International Insurance and Bond Safeguard Insurance Company to the Joint Plan of Liquidation for the WMLP Debtors (Docket No. 1873) (the "Lexon Objection"); Objection of the Chubb Companies to the Joint Plan of Liquidation for the WMLP Debtors (Docket No. 1874) (the "Chubb Objection"); United Mine Workers of America's Limited Objection to the Joint Plan of Liquidation for the WMLP Debtors (Docket No. 1875) (the "UMWA's Objection"); Joinder and Reservation of Rights of Argonaut Insurance Company in Connection with WMLP Plan (Docket No. 1876) (the "Argonaut Insurance Objection"); Objection and Reservation of Rights of Zurich American Insurance Company and Affiliate to Joint Plan of Liquidation for the WMLP Debtors (Docket No. 1877) (the "Zurich Objection"); State of Ohio, Ohio Environmental Protection Agency's Limited Protective Objection to the Joint Plan of Liquidation for the WMLP Debtors (Docket No. 1886) (the "Ohio EPA Objection"); Limited Protective Objection of the United States of America (Army Corps) to the WMLP Debtors' Joint Plan of Liquidation (Docket No. 1887) (the "Army Corps' Objection"); Limited Objection

The WMLP Debtors are working toward agreeing on language to be included in the Confirmation Order that will consensual resolve the Chubb Objection and anticipate that this Objections will be resolved prior to the Confirmation Hearing. The WMLP Debtors contend that the remaining Objections, if not resolved, should be overruled. The WMLP Debtors' responses to the various objections are set forth in greater detail below and summarized in the chart attached hereto as Exhibit B.

1. Surety Objections

87. The majority of the Objections—namely, First Surety Objection, Travelers Objection, Lexon Objection, Argonaut Insurance Objection and Zurich Objection—were filed by the surety bond providers (collectively, the "Surety Objections") and address the same issue—the purported treatment of the objectors' surety bonds, indemnity agreements and bond collateral. These Objections stated that inclusion of certain language in the Confirmation Order would resolve the Objections consensually. While the WMLP Debtors disagree with the legal arguments made in these Objections, the WMLP Debtors nevertheless have been engaged in good faith discussions with the objectors to resolve these Objections on a consensual basis and anticipate reaching consensual resolutions in advance of the Confirmation Hearing.

88. To the extent the WMLP Debtors are unable to reach such consensual resolutions, the WMLP Debtors respectfully submit that the Objections should be overruled.

89. Specifically, with respect to the Zurich Objection, the WMLP Debtors submit that the Kemmerer Sale complies with the applicable law and the terms of existing contracts between the WMLP Debtors and the objectors—Zurich American Insurance Company, and its affiliate,

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and Reservation of Rights of Westmoreland Mining Holds, LLC to the Joint Plan of Liquidation for the WMLP Debtors (Docket No. 1900) (the "WLB Purchaser Objection").

Fidelity and Deposit Company of Maryland ("Zurich"). The Kemmerer Sale involves a single surface mine located in Wyoming (the "Kemmerer Mine"). Under Surface Mining Control and Reclamation Act rules, the relevant authority governing mining permits and related bonding for the Kemmerer Mine is the Wyoming Department of Environmental Quality ("WDEQ"). Under Wyoming law, in order to transfer a permit associated with mine operations, the permit transfer application must be submitted to WDEQ, and must include an executed replacement bond at the time of submission.[92] Importantly, contrary to Zurich's contentions, the WMLP Debtors do not intend to transfer the bonds associated with the Kemmerer Mine (the existing permittee and principal on the bond will remain the same and any operator will only operate with authorization of the existing permittee). Instead, the WMLP Debtors contemplate transferring the applicable permits. The Kemmerer APA provides that, as a condition to closing, the Kemmerer Purchaser must receive an executed replacement bond and submit a permit transfer application shortly after the closing.[93] This process, contemplated by Wyoming law, presumes a period of "double bonding," where the pre-sale and post-sale bonds remain in place.[94] During the pendency of the permit transfer application, the mine operations may be continued under the existing permit and bond, as long as the mine operator is appropriately licensed. Only upon the transfer of the permit will the pre-sale surety be released from its bonding obligations.[95] Zurich's contention that the Kemmerer Purchaser should be required to obtain "interim bonding" in substitution of Zurich's bonds while the permit transfer application is pending is, in fact, contrary to Wyoming law. Moreover, there are no contractual obligations between Zurich and the WMLP Debtors that

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92 *See* Wyo. Admin. Rules (Evtl. Quality), Ch. 12 § 1(b)(ii)(A).

93 Kemmerer APA, §§ 8.6, 9.1, 9.3.

94 *See* Wyo. Admin. Rules (Evtl. Quality), Ch. 12 § 1(b)(ii)(A).

95 *See* Wyo. Admin. Rules (Envtl. Quality) Ch. 12 § 2(f)(iii)(A).

(1) would prevent the WMLP Debtors from complying with the Wyoming permit transfer process outlined above, (2) prohibit the conduct of operations under the proposed interim arrangement or (3) would require Kemmerer Purchaser to provide any indemnity agreement in favor of Zurich in connection with the permit transfer.

2. The United States' Objections

90. The WMLP Debtors submit that the United States' Objection should also be overruled. The United States erroneously argues that the Plan is not feasible because it allows the WMLP Debtors and other interested parties to waive a condition that the closing of the Kemmerer Sale is a condition precedent to the occurrence of the Effective Date. That is not correct – effectiveness of the Plan is conditioned on the closing of the Kemmerer Sale.[96] The United States underscores the ease with which this condition precedent could be waived. The Committee Settlement and the Plan are both predicated on the closing of the Kemmerer Sale. Pursuant to the terms of the Plan, waiving the closing of the Kemmerer Sale as a condition precedent to the occurrence of the Effective Date requires obtaining approval of the Creditors' Committee.[97] Absent a closing of the Kemmerer Sale, the WMLP Debtors would have to re-negotiate the Plan and the Committee Settlement, which all serve as strong disincentives to waive this condition precedent.

3. The UMWA's Objection

91. The United Mine Workers of America's ("UMWA") Objection should be overruled. While the closing of the Kemmerer Sale is a condition precedent to the Effective Date[98] and the Purchaser's (as defined in the Kemmerer APA) entry into a satisfactory collective

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[96] Plan, § VII.B.

[97] Plan, § VII.C.

[98] Plan, § VII.B.

bargaining agreement ("CBA") for the Transferred Employees (as defined in the Kemmerer APA) is a condition precedent to closing the Kemmerer Sale,[99] this requirement does not render the Plan unconfirmable. In fact, the Kemmerer APA provides that the Purchaser may waive the aforementioned condition "in whole or in part in its sole discretion."[100] Therefore, UMWA's Objection should be overruled.

4. Ohio EPA and Army Corps Objections

92. The Ohio EPA Objection and the Army Corps' Objection address the same purported issue with the Plan. According to the Objections, the Plan fails to adequately resolve the WMLP Debtors' obligations to comply with certain environmental regulatory obligations in connection with the assets (the "Oxford Assets") that were transferred to CCU as part of the court-approved Oxford Sale. The WMLP Debtors' purported obligation to comply with these environmental regulations is subject to an adversary proceeding pending before this Court captioned *Westmoreland Coal Company, et al. v. CCU Coal and Construction, LLC, et al.*, Adv. No. 19-03354 (the "Oxford Adversary Proceeding"), which seeks a declaratory judgment in favor of the WMLP Debtors stating that the obligations were transferred to CCU.

93. While the Oxford Adversary Proceeding is still pending, the parties are close to reaching a consensual resolution, pursuant to which CCU will agree that it has assumed any liabilities subject to the Oxford Adversary Proceeding that the WMLP Debtors that sold the Oxford Assets had immediately prior to closing the CCU sale**.** The Plan does not provide for compliance with the aforementioned environmental regulatory obligations because the WMLP

[99] *See* Kemmerer APA, § 9.1(d).

[100] Kemmerer APA, § 9.1.

Debtors contend that they do not, in fact, have any such obligations. Thus, the Ohio EPA Objection and the Army Corps' Objection should be overruled.

5. WLB Purchaser Objection

94. The WMLP Debtors are working diligently with all relevant parties, including the WLB Purchaser and WMLP Secured Parties, to resolve the outstanding Objections, including the Surety Objections. The WMLP Debtors are hopeful that the Surety Objections will be resolved in advance of the Confirmation Hearing. However, as more fully explained above, if the Surety Objections are not resolved, the WMLP Debtors nevertheless believe the Plan should be confirmed despite the Objections.

95. Moreover, the Plan provides for payment of Allowed Administrative Expense Claims that the WMLP Debtors reasonably expect to be asserted and Allowed against the WMLP Debtors' Estates.[101] As explained above, in a proposed liquidating plan scenario, a plan proponent "need only demonstrate that there exists a reasonable probability that the plan provisions can be performed,"[102] including having sufficient funds to meet the debtor's post-confirmation obligations to pay for the costs of administering and fully consummating the plan and closing the chapter 11 cases.[103] The WMLP Debtors submit that the WLB Purchaser's purported administrative claim against the WMLP Debtors' Estates is entirely speculative and unlikely to ever become an Allowed Administrative Expense Claim, and, therefore, in order to satisfy the feasibility threshold, the Plan need not provide for a mechanism to satisfy such a claim. Therefore, the WLB Purchaser's Objection on this ground is without merit.

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[101] Plan, § II.1.A.

[102] *In re Idearc Inc*., 423 B.R at 167 (Bankr. N.D. Tex. 2009), subsequently aff'd sub nom. 662 F.3d 315 (5th Cir. 2011) (citation omitted).

[103] *See In re Finlay Enterprises, Inc.*, 2010 WL 6580629, at 2-6.

WAIVER OF STAY

96. The WMLP Debtors respectfully request that, pursuant to Bankruptcy Rule 3020(e), the Court waive the 14-day stay of the Confirmation Order. Such a waiver is appropriate in these circumstances to permit the Plan Administrator to commence his duties as quickly as practicable, to promote prompt distributions under the Plan for the benefit of creditors and because a significant number of Implementation Activities are capable of being undertaken in short order. Therefore, the WMLP Debtors respectfully submit that good cause exists to support the waiver of the stay imposed by Bankruptcy Rule 3020(e).

CONCLUSION

For all of the foregoing reasons, the WMLP Debtors submit that the Plan fully satisfies all applicable requirements of the Bankruptcy Code and should be approved and confirmed by the Court.

Dated: May 31, 2019

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Certificate of Service

I certify that on the 31st day of May 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/ Oliver S. Zeltner
Oliver S. Zeltner

Exhibit A

Confirmation Standards Chart

CONFIRMATION OF AMENDED JOINT PLAN OF LIQUIDATION FOR THE WMLP DEBTORS

THE PLAN COMPLIES WITH EACH OF THE
REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE

This chart summarizes the requirements for confirmation of the *Amended Joint Plan of Liquidation for the WMLP Debtors*, to be filed prior to the Confirmation Hearing, which amends the *Joint Plan of Liquidation for the WMLP Debtors* filed on March 15, 2019 (Docket No. 1612) (as it may be further modified or amended, the "Plan") under section 1129 of title 11 of the United States Code (the "Bankruptcy Code") and is provided in support of the Plan and the *WMLP Debtors' (I) Memorandum of Law in Support of (A) Confirmation of the Joint Plan of Liquidation of the WMLP Debtors and (B) Approval of the Disclosure Statement on a Final Basis and (II) Response to Objections to the Plan* (the "Confirmation Memorandum") filed with the Bankruptcy Court herewith. Capitalized terms not otherwise defined herein have the meanings given to them in the Plan and the Confirmation Memorandum, as applicable.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(1)	Section 1129(a)(1) — The Plan Must Comply with the Applicable Provisions of Title 11. The substantive provisions that are most relevant in the context of section 1129(a)(1) are sections 1122 (classification requirements) and 1123 (mandatory plan contents) of the Bankruptcy Code.	
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1122)***	A. Section 1122 of the Bankruptcy Code establishes the requirements for the classification of claims and interests in a chapter 11 plan.	A. The Plan complies with, and satisfies the requirements of, section 1122 of the Bankruptcy Code.
	Section 1122 of the Bankruptcy Code provides that, except in the case of unsecured claims separately classified for administrative convenience, "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class."	1. The Plan provides for the separate classification of Claims against and Interests in the WMLP Debtors based upon differences in the legal nature and/or priority of such Claims and Interests in accordance with applicable law. The Plan designates seven different classes of Claims and Interests. *See* Plan, Section II.C; Confirmation Memorandum, ¶ 18.
		2. Moreover, each class of Claims or Interests includes only substantially similar Claims or Interests against the applicable WMLP Debtor. *See* Plan, Section II.C; Confirmation Memorandum, ¶ 19. Finally, valid business, factual and legal reasons exist for the Plan's separate classification of Claims or Interests in connection with a particular WMLP Debtor. *See* Confirmation Memorandum, ¶ 19.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a))***	A. Section 1123(a) of the Bankruptcy Code specifies seven requisites for the contents of a chapter 11 plan.	A. The Plan contains each of the mandatory plan provisions.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(1))***	1. Section 1123(a)(1) of the Bankruptcy Code requires that a chapter 11 plan of designate: (a) classes of claims, other than priority claims under section 507(a)(2), 507(a)(3) or 507(a)(8) of the Bankruptcy Code; and (b) classes of interests.	1. Section II.C of the Plan designates 7 classes of Claims and Interests. *See* Plan, Section II.C.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(2))***	2. Section 1123(a)(2) of the Bankruptcy Code requires that a plan specify classes of claims and interests that are unimpaired under the plan.	2. Section II.C of the Plan specifies that Claims and Interests in Classes 1, 3 and 7 are Unimpaired. *See* Plan, Section II.C.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(3))***	3. Section 1123(a)(3) of the Bankruptcy Code requires that a plan specify the treatment of any class of claims or interests that is impaired under the plan.	3. Section II.C of the Plan specifies that Claims and Interests in Classes 2, 4, 5 and 6 are Impaired and describes the treatment of each such Class. *See* Plan, Section II.C.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(4))***	4. Section 1123(a)(4) of the Bankruptcy Code requires that a plan provide the same treatment for each claim or interest of a particular class unless the holder consents to less favorable treatment of such claim or interest.	4. Section II.C of the Plan provides for equality of treatment within each Class of Claims or Interests, unless the Holder of a Claim or Interest agrees to less favorable treatment of its Claim or Interest. *See* Plan, Section II.C.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(5))***	5. Section 1123(a)(5) of the Bankruptcy Code requires that a plan provide adequate means for its implementation and lists several examples of the means by which plan implementation may be accomplished.	5. In accordance with the requirements of section 1123(a)(5) of the Bankruptcy Code, Article III of the Plan, as well as various other provisions thereof, provide adequate means for the Plan's implementation. Those provisions relate to, among other things appointment of a Liquidation Trustee for the purpose of, *inter alia*, administering Claims and any remaining assets, making distributions and liquidating the Estates. *See* Plan, Article III.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(6))***	6. Section 1123(a)(6) of the Bankruptcy Code requires that a plan provide for the inclusion in the debtor's charter of a provision prohibiting the issuance of nonvoting equity securities and providing, as to the several classes of securities possessing voting power, an appropriate distribution of voting power among such classes.	6. In these Chapter 11 Cases, section 1123(a)(6) of the Bankruptcy Code is inapplicable because the Plan is a liquidating plan and does not provide for the issuance of equity or other securities by the WMLP Debtors. *See* Confirmation Memorandum ¶ 24.
11 U.S.C. § 1129(a)(1)	7. Section 1123(a)(7) of the Bankruptcy Code requires that a plan contain only provisions	7. The Plan provides that Gerald A. Tywoniuk will serve as the initial Liquidation Trustee after the Effective Date. Plan, § III.B.3. Mr. Tywoniuk's selection as Liquidation Trustee is consistent with section 1123(a)(7)

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
(11 U.S.C. § 1123(a)(7))	that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director or trustee under the plan or any successor thereto.	because of his substantial institutional knowledge that will provide for an efficient and fair implementation of the Plan and liquidation of the WMLP Debtors' Estates. *See* Plan, Section III.B.3; Confirmation Memorandum ¶ 25.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b))***	A. Section 1123(b) of the Bankruptcy Code identifies various discretionary provisions that may be included in a chapter 11 plan, provided they are "not inconsistent with" the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1123(b)(6).	A. The Plan contains many of these discretionary plan provisions.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(1))***	1. Section 1123(b)(1) of the Bankruptcy Code allows a plan to impair or leave unimpaired any class of claims (secured or unsecured) or interests.	1. Section II.C of the Plan provides for the impairment or unimpairment of Classes of Claims. *See* Plan, Section II.C; Confirmation Memorandum ¶ 27.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(2))***	2. Section 1123(b)(2) of the Bankruptcy Code allows a plan, subject to section 365 of the Bankruptcy Code, to provide for the assumption, rejection or assignment of any executory contract or unexpired lease not previously rejected.	2. Section IV.A of the Plan provides that, on the Effective Date, each Executory Contract and Unexpired Lease not previously rejected, assumed or assumed and assigned shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, with certain exceptions. The treatment of executory contracts and unexpired leases in the Plan is authorized by, and is consistent with, section 1123(b)(2) of the Bankruptcy Code. *See* Plan, Section IV.A; Confirmation Memorandum ¶ 28.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(3)***	3. Section 1123(b)(3) of the Bankruptcy Code allows a plan to provide for the settlement or adjustment of any claim or interest belonging to a debtor or provide for the retention and enforcement of any claim or interest.	3. The Plan provides for a release of claims and causes of actions owned by the WMLP Debtors against the Released Parties. a. The Plan provides that, as of the Effective Date, the WMLP Debtors will forever release, waive and discharge all Claims and Causes of Action they have, had, or may have against the Released Parties, subject to certain exceptions. *See* Plan, Section VII.F.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(4))***	4. Section 1123(b)(4) of the Bankruptcy Code allows a plan to provide for the sale of all or substantially all of the property of a debtor's estate.	4. The Plan contemplates the sale, transfer, assignment or abandonment of the WMLP Debtors' remaining property. *See* Plan, Section III.B.10; Confirmation Memorandum ¶ 30.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(5))***	5. Section 1123(b)(5) of the Bankruptcy Code allows a plan to modify the rights of holders of claims, with the exception of claims secured only by a security interest in real property that is the debtor's principal residence, or leave unaffected the rights of holders of any class of claims.	5. Sections II.C of the Plan modifies the rights of Holders of Claims in Impaired Classes and leaves unaffected the rights of Holders of other Claims in Unimpaired Classes. *See* Plan, Section II.C; Confirmation Memorandum ¶ 31.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(6))***	6. Section 1123(b)(6) of the Bankruptcy Code is a "catchall" provision that permits inclusion in a plan of any appropriate provision as long as such provision is not inconsistent with the Bankruptcy Code.	6. The Plan includes numerous other provisions designed to ensure its implementation that are consistent with the Bankruptcy Code, including: a. Certain Exculpation provisions applicable from the Effective Date, under which the Exculpated Parties shall be released and exculpated from any Cause of Action for any claim related to any act or omission in connection with, relating to, or arising out of, the WMLP Debtors Chapter 11 Cases, the Disclosure Statement, this Plan, the Intercompany Settlement, the WMLP Committee Settlement, the Asset Sales or any Dissolution Transaction, contract, instrument, release or other agreement or document created or entered into in connection with the Disclosure Statement or this Plan, the Intercompany Settlement, the WMLP Committee Settlement, the Asset Sales, the filing of the WMLP Debtors' Chapter 11 Cases, the pursuit of Confirmation, the administration and implementation of this Plan, or the distribution of property under this Plan or any other related agreement, subject to certain to exception (*see* Plan, Section VII.F.3); b. Certain Releases by the WMLP Debtors pursuant to which the WMLP Debtors and their Estates forever release, waive and discharge any and all Claims and Causes of Action that the WMLP Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a WMLP Debtor or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the WMLP Debtors, the WMLP Debtors' capital structure, the assertion or enforcement of rights and remedies against the WMLP Debtors, the WMLP Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among a WMLP Debtor and another WMLP Debtor, the WMLP Debtors' Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan, the Asset Sales, or any Dissolution Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement, the Plan, the Asset Sales, the filing of the WMLP Debtors' Chapter 11 Cases, the pursuit of Confirmation, the administration and implementation of this Plan, or the distribution of property under this Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Plan Effective Date, except for any claims related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct or gross negligence (*see* Plan, Section VII.4.a); c. Certain Releases by Releasing Parties under which the Releasing Parties forever release and waive and discharge each WMLP Debtor and Released Party from any and all Claims and Causes of Action, whether known or unknown, including any derivative claims asserted on behalf of the WMLP Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the WMLP Debtors, the WMLP Debtors' in- or out of court restructuring efforts, intercompany transactions between or among a WMLP Debtor and another WMLP Debtor, the WMLP Debtors' Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan, the Asset Sales, or any Dissolution Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement, the Plan, the Asset Sales, the filing of the WMLP Debtors' Chapter 11 Cases, the pursuit of Confirmation, the administration and implementation of this Plan, or the distribution of property under this Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Plan Effective Date, except for any claims related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct or gross negligence (*see* Plan, Section VII.4.b); and d. retention of jurisdiction over all matters arising in, arising under, and related to the Chapter 11 Cases (*see*

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
		Plan, Section VIII).
11 U.S.C. § 1129(a)(2)	Section 1129(a)(2) — The WMLP Debtors Must Comply with the Applicable Provisions of Title 11.	
11 U.S.C. § 1129(a)(2) ***(11 U.S.C. § 1125)***	A. The primary purpose of section 1129(a)(2) of the Bankruptcy Code is to ensure that the proponent has adhered to the disclosure requirements of sections 1125 and 1126 of the Bankruptcy Code. As a result, the plan proponent's compliance with sections 1125 and 1126 of the Bankruptcy Code forms the basis of the inquiry under section 1129(a)(2) of the Bankruptcy Code.	A. The requirements of section 1129(a)(2) have been satisfied.
	1. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan from holders of claims or interests unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved by the court as containing adequate information.	1. The WMLP Debtors have adhered to the disclosure requirements of section 1125 of the Bankruptcy Code. a. By an order dated March 18, 2019 (Docket No. 1620) (the "Disclosure Statement Order"), the Bankruptcy Court conditionally approved the Disclosure Statement, and, among other things, the proposed procedures for solicitation of votes on the Plan and related notice, forms and ballots. *See* Disclosure Statement Order; Confirmation Memorandum ¶ 36. b. The Bankruptcy Court considered and, in the Disclosure Statement Order, approved the Solicitation Package, the timing and method of delivery of the Solicitation Package and the rules for tabulating votes to accept or reject the Plan. *See* Disclosure Statement Order; Confirmation Memorandum ¶ 36. c. The WMLP Debtors (through the Claims and Noticing Agent) transmitted the approved Solicitation Package in accordance with the instructions of the Bankruptcy Court in the Disclosure Statement Order. *See Affidavit of Donlin, Recano & Company, Inc. Regarding Service of Solicitation Packages with Respect to Amended Disclosure Statement with Respect to Joint Plan of Liquidation for the WMLP Debtors* (Docket No. 1647); Confirmation Memorandum ¶ 36.
	2. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a chapter 11 plan. Pursuant to section 1126 of the Bankruptcy Code, only holders of allowed claims and allowed equity interests in impaired classes of claims or equity interests that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject such plan.	2. The WMLP Debtors have adhered to the solicitation requirements of section 1126 of the Bankruptcy Code. a. The WMLP Debtors solicited votes from Holders of Allowed Claims in Class 2 (Credit Agreement Claims) because this Class is Impaired and entitled to receive a distribution under the Plan.. Accordingly, pursuant to section 1126(a) of the Bankruptcy Code, Class 2 was entitled to vote to accept or reject the Plan. *See* Plan, § II.C; Confirmation Memorandum ¶ 40.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(3)	Section 1129(a)(3) — The Plan Must Be Proposed in Good Faith and Not by Any Means Forbidden by Law.	
11 U.S.C. § 1129(a)(3)	A. Under the good faith standard, good faith is present if the plan has been proposed with the reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code. In assessing good faith, the court may look to whether a plan has been proposed with a legitimate purpose and with a basis for expecting that a restructuring consistent with the Bankruptcy Code's objectives can be effectuated.	A. The WMLP Debtors' good faith is evident from the facts and record of the Chapter 11 Cases, the Disclosure Statement and the record of the Confirmation Hearing: 1. The Plan has been proposed in good faith and for the legitimate purposes of liquidating the WMLP Debtors' Estates in as organized and controlled a fashion as possible in the interests of the stakeholders. 2. The Plan is the culmination of extensive arm's-length negotiations among the WMLP Debtors, the WLB Debtors, the WMLP Secured Parties, the Conflicts Committee, the Creditors' Committee and other interested parties. 3. The Plan is supported by the WMLP Debtors' key creditor constituencies, including the Creditors' Committee and WMLP Secured Parties. *See* Confirmation Memorandum ¶ 45.
11 U.S.C. § 1129(a)(4)	Section 1129(a)(4) — All Payments to Be Made by the Debtor in Connection with Its Chapter 11 Case Must Be Subject to Court Approval.	
11 U.S.C. § 1129(a)(4)	A. Section 1129(a)(4) of the Bankruptcy Code requires that all payments made by the debtor, the plan proponent or by a person issuing securities or acquiring property under a plan be approved by the Bankruptcy Court as reasonable.	A. Pursuant to the Bankruptcy Court's *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* (Docket No. 495), entered on November 14, 2018, this Court has authorized and approved on an interim basis the payment of certain fees and expenses of Professionals retained in these Chapter 11 Cases. Additionally, Section II.A.1.c.i of the Plan provides that all payments on account of Professional Claims for services rendered prior to the Effective Date are subject to Court approval under standards established by the Bankruptcy Code. Finally, Article VIII of the Plan provides that the Bankruptcy Court will retain jurisdiction after the Effective Date to hear and determine all applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan. *See* Plan, Articles II and VIII; Confirmation Memorandum ¶ 48.
11 U.S.C. § 1129(a)(5)	Section 1129(a)(5) — The Plan Must Disclose Information Regarding Postconfirmation Management of the Debtor.	
11 U.S.C. § 1129(a)(5)	A. Section 1129(a)(5) of the Bankruptcy Code imposes the following two requirements: 1. First, a plan may be confirmed only if the proponent discloses the identity of those individuals who will serve as management of the reorganized debtor, the identity of any insider to be employed or retained by the reorganized debtor and the compensation to be paid to such insider. 2. Second, the appointment or continuation in office of existing management must be consistent with the interests of creditors, equity security holders and public policy.	A. In accordance with Article IV.M of the Plan, WMLP and WMGP will cease to exist on the Effective Date, and all existing articles of organization and similar constituent documents will be cancelled, effective as of the Effective Date. Each Subsidiary WMLP Debtor will also cease to exist upon its dissolution pursuant to the Plan. Consequently, as of the Effective Date, all directors and officers of the WMLP Debtors shall be discharged, and all such appointments rescinded. Therefore, the requirements imposed by section 1129(a)(5) of the Bankruptcy Code are inapplicable to the Plan. Nevertheless, the WMLP Debtors have disclosed the identity, compensation, and terms of the engagement of the Liquidation Trustee appointed to administer the Liquidation Trust. *See* Confirmation Memorandum ¶ 50.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(6)	Section 1129(a)(6) — The Plan Does Not Provide for Any Rate Change Subject to Regulatory Approval.	
11 U.S.C. § 1129(a)(6)	A. Section 1129(a)(6) of the Bankruptcy Code requires that, after confirmation of a plan, any governmental regulatory commission with jurisdiction over the rates of the debtor has approved any rate change provided for in the plan, or that such rate change is expressly conditioned on such approval. Section 1129(a)(6) is applicable only to debtors subject to governmental regulatory authority.	A. This section is not applicable because the WMLP Debtors' businesses do not involve the establishment of rates over which any regulatory commission has jurisdiction or will have jurisdiction after Confirmation. *See* Confirmation Memorandum ¶ 51.
11 U.S.C. § 1129(a)(7)	Section 1129(a)(7) — The Plan Must Be in the Best Interests of Creditors.	
11 U.S.C. § 1129(a)(7)	A. Section 1129(a)(7) of the Bankruptcy Code codifies the so-called "best interests of creditors" test. The best interests of creditors test requires that, with respect to each impaired class of claims or interests, except for claims where the section 1111(b) election applies, each holder of a claim or interest <u>either</u> has accepted the plan <u>or</u> will receive or retain property of a value, as of the effective date of the plan, that is not less than what such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code.	A. The Plan satisfies the best interests of creditors test. 1. By its express terms, the best interests test is applicable only to nonaccepting Holders of Impaired Claims and Interests. 2. The best interests test does not apply to the Holders of Claims in Classes 1 (Priority Claims), 3 (Other Secured Claims), and 7 (Subsidiary Interests) as those Claims are Unimpaired and, therefore, those Holders are deemed to have accepted the Plan. 3. The best interests test is satisfied with regard to Classes 4 (General Unsecured Claims), 5 (WMLP Intercompany Claims) and 6 (WMLP Interests and WMGP Interests) because there would be no recovery on these Claims in a liquidation under chapter 7 of the Bankruptcy Code. 4. As set forth in the Disclosure Statement and the Confirmation Memorandum, no dissenting Holder of a Claim or Interest in an Impaired Class will receive less under the Plan than it would receive in a chapter 7 liquidation of the WMLP Debtors' assets. *See* Confirmation Memorandum ¶¶ 53-54.
11 U.S.C. § 1129(a)(8)	Section 1129(a)(8) — The Plan Must Be Accepted by the Requisite Classes of Claims and Interests.	
11 U.S.C. § 1129(a)(8)	A. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests either vote to accept the plan or be unimpaired under the plan. Pursuant to Section 1126(c) of the Bankruptcy Code, a class of claims accepts a plan if holders of at least two thirds in amount and more than one half in number of the allowed claims in that class vote to accept the plan.	A. All Unimpaired Classes of Claims and Interests under the Plan (<u>i.e.</u>, Classes 1, 3 and 7) are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, thus, have not voted on the Plan. Confirmation Memorandum ¶ 57. B. While the Voting Deadline has not yet passed, the only Voting Class (Class 2—Credit Agreement Claims) is expected to vote in favor of the Plan. *See* Confirmation Memorandum ¶ 42. C. The WMLP Debtors meet the "cramdown" requirements with respect to the Deemed Rejecting Classes. Confirmation Memorandum ¶ 57.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	Section 1129(a)(9) — The Plan Must Provide for the Payment of Priority Claims.	
11 U.S.C. § 1129(a)(9)	A. Section 1129(a)(9) of the Bankruptcy Code provides for mandatory treatment of certain priority claims under a chapter 11 plan.	A. The Plan meets these requirements regarding the payment of Allowed Administrative Claims, Professional Claims, Priority Tax Claims and United States Trustee Statutory Fees. *See* Plan, Section II.A.
11 U.S.C. § 1129(a)(10)	Section 1129(a)(10) — The Plan Must Be Accepted by at Least One Impaired Class of Claims.	
11 U.S.C. § 1129(a)(10)	A. Section 1129(a)(10) of the Bankruptcy Code provides that if a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan must accept the plan, determined without including any acceptance of the plan by any insider.	A. Holders of Claims in Class 2 are Impaired and thus, are entitled to vote under the Plan. Prior to the Confirmation Hearing, the WMLP Debtors expect to receive the requisite number of votes accepting the Plan. *See* Confirmation Memorandum ¶ 59.
11 U.S.C. § 1129(a)(11)	Section 1129(a)(11) — The Plan Must Be Feasible.	
11 U.S.C. § 1129(a)(11)	A. Section 1129(a)(11) of the Bankruptcy Code provides that a chapter 11 plan may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." In the context of a liquidating plan, feasibility is established by demonstrating that the debtor is able to satisfy the conditions precedent to the Effective Date and otherwise has sufficient funds to meet its post-Confirmation obligations to pay for the costs of administering and fully consummating the Plan and closing the chapter 11 cases.	A. Here, the feasibility test is satisfied as will be demonstrated at the Confirmation Hearing, there are sufficient funds to administer and consummate the Plan and to close these Chapter 11 Cases and the conditions precedent to the Effective Date will be satisfied. *See* Confirmation Memorandum ¶ 61.
11 U.S.C. § 1129(a)(12)	Section 1129(a)(12) — The Plan Must Provide for the Payment of Fees to the United States Trustee.	
11 U.S.C. § 1129(a)(12)	A. Section 1129(a)(12) of the Bankruptcy Code requires a plan to provide that all fees payable under 28 U.S.C. § 1930 to the United States trustee, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the Plan.	A. The Plan complies with section 1129(a)(12) by providing that on a prospective basis all fees payable pursuant to 28 U.S.C. § 1930 after the Effective Date will be paid by the applicable Reorganized Debtor in accordance therewith until the earlier of the conversion or dismissal of the applicable Chapter 11 Case under section 1112 of the Bankruptcy Code or the closing of the applicable Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code. *See* Plan, Section II.A.1.b.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(b)	Section 1129(b) — If a Class of Claims or Interests Rejects or Is Deemed to Reject the Plan, the Plan Must Satisfy the Cramdown Requirements of Section 1129(b).	
11 U.S.C. § 1129(b)	A. Section 1129(b) provides that a bankruptcy court is required to confirm a plan over the dissent of one or more classes of impaired claim or interest holders if the plan:	A. The Plan satisfies the requirements of section 1129(b) with respect to the Rejecting Classes, the Deemed Rejecting Classes (and to the extent applicable, the Non-Voting Classes).
	1. meets all requirements for confirmation set forth in section 1129(a);	1. As demonstrated above, the Plan meets all the requirements of section 1129(a).
	2. does not discriminate unfairly; and	2. As explained in subsection B below, the Plan does not discriminate unfairly with respect to any impaired Class of Claims or Interests.
	3. is otherwise fair and equitable with respect to each impaired class of claims or interests that has not accepted the plan.	3. As explained in subsection C below, the Plan is otherwise fair and equitable with respect to any impaired Class of Claims or Interests.
	B. The unfair discrimination standard prevents creditors and interest holders with similar legal rights from receiving materially different treatment under a proposed plan. Conversely, where classes of claims or interests with dissimilar legal rights have been separately and properly classified under section 1122 of the Bankruptcy Code, the unfair discrimination standard is not applicable, and the plan may treat such classes differently.	B. The Plan does not discriminate unfairly. 1. The Plan does not "discriminate unfairly" against any Holders of Claims and Interests in Classes that are deemed to reject the Plan. The treatment of Holders in the Rejecting Classes is proper because all similarly situated Holders of Claims and Interests will receive the same treatment. *See* Confirmation Memorandum ¶ 66.
	C. The Plan is otherwise fair and equitable.	C. The Plan treats the Rejecting Classes fairly and equitably.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	1. Pursuant to section 1129(b)(2)(B) of the Bankruptcy Code, a plan is "fair and equitable" with respect to a class of unsecured claims if "the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property." Section 1129(b)(2)(C) further provides that a plan is fair and equitable with respect to a class of interests if the plan provides that "the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property."	1. Under the Plan, 1129(b)(2)(B) is satisfied with respect to the Holders of unsecured claims, as no claims or interests junior to such Classes will receive or retain any property. Similarly, 1129(b)(2)(C) is satisfied with respect to the Holders of Interest, as no interests junior to the Class of Interests will receive or retain any property under the Plan. In addition, no Class of Claims or Interests senior to the Rejecting Classes are receiving more than full payment on account of their Claims or Interests in such Class. *See* Confirmation Memorandum ¶¶ 67-68.
11 U.S.C. § 1129(c)	A. Section 1129(c) of the Bankruptcy Code provides that, with a limited exception, a bankruptcy court may only confirm one plan.	A. The Plan is the only plan that has been Filed in the Chapter 11 Cases and is the only plan that satisfies the requirements of subsections (a) and (b) of section 1129 of the Bankruptcy Code. Confirmation Memorandum ¶ 69.
11 U.S.C. § 1129(d)	A. Section 1129(d) of the Bankruptcy Code provides that on request of a party in interest that is a governmental unit, the bankruptcy court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or of the application of section 5 of the Securities Act.	A. No party in interest, including but not limited to any governmental unit, has requested that the Bankruptcy Court deny Confirmation of the Plan on grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act, and the principal purpose of the Plan is not such avoidance. Confirmation Memorandum ¶ 70.

Exhibit B

Objections Summary Chart

CONFIRMATION OF AMENDED JOINT PLAN OF LIQUIDATION FOR THE WMLP DEBTORS

SUMMARY OF PLAN CONFIRMATION OBJECTIONS

This chart summarizes the objections that have been filed to date (each, an "Objection") with respect to the *Amended Joint Plan of Liquidation for the WMLP Debtors*, to be filed prior to the Confirmation Hearing, which amends the *Joint Plan of Liquidation for the WMLP Debtors* filed on March 15, 2019 (Docket No. 1612) (as it may be further modified or amended, the "Plan") under section 1129 of title 11 of the United States Code (the "Bankruptcy Code"). For the reasons set forth below and in the *WMLP Debtors' (I) Memorandum of Law in Support of (A) Confirmation of the Joint Plan of Liquidation of the WMLP Debtors and (B) Approval of the Disclosure Statement on a Final Basis and (II) Response to Objections to the Plan* (the "Confirmation Memorandum"), filed contemporaneously herewith, the WMLP Debtors respectfully request that the Court overrule in their entirety any Objections not consensually resolved.[1]

DOCKET NO.	OBJECTION	BASIS FOR OBJECTION	RESPONSE/STATUS
1867	United States' Limited Protective Objection to the Joint Plan of Liquidation for the WMLP Debtors	• The United States argues that the Plan is not feasible and forbidden by law because it allows the WMLP Debtors and other interested parties to waive a condition that the closing of the Kemmerer Sale is a condition to the Plan Effective Date. • Additionally, the objector argues that the Plan assumes that the Credit Bid Sale will close and that the buyer will assume many significant reclamation and other liabilities that the WMLP (and WLB) Debtors would otherwise be responsible for. • Finally, the objector claims that the Plan is not feasible because it does not provide for full compliance with the legal requirements with respect to those reclamation and other liabilities in the event the Kemmerer Sale does not close.	• Effectiveness of the Plan is conditioned on the closing of the Kemmerer Sale. • The Plan cannot be confirmed if this condition is waived, as both the Plan and the WMLP Committee Settlement assume the Kemmerer Sale will close; absent closing of the Kemmerer Sale, the WMLP Debtors would need an alternative structure to resolve the WMLP Debtors' Chapter 11 Cases.
1870	Limited Objection of First Surety Corporation and Westchester Fire Insurance Company to Joint Chapter 11 Plan for the WMLP Debtors	• The objectors object to the Plan to the extent it is intended to modify, limit, alter or affect the treatment of the objectors' surety bonds, indemnity agreement and bond collateral. • Moreover, the objectors contend that the inclusion of exculpatory and injunctive provisions, without the option for opt-out, makes the Plan unconfirmable.	The parties are negotiating a consensual resolution regarding language in Confirmation Order.
1872	Limited Objection of Travelers Casualty and Surety Company of America to Joint Plan of Liquidation for the WMLP	• The objector argues that the release, exculpation, and injunction provisions included in the Plan are contrary to law and could be interpreted to prejudice the Sureties' rights under their existing Indemnity Agreements and enjoin the Sureties from exercising their rights under surety law and the regulatory programs under which the surety bonds were written. • Moreover, the injunction appears to negate the Sureties' long-	The parties are negotiating a consensual resolution regarding language in Confirmation Order.

[1] Capitalized terms used but not defined herein have the meaning given to such terms in the Confirmation Memorandum or the Plan, as applicable.

DOCKET NO.	OBJECTION	BASIS FOR OBJECTION	RESPONSE/STATUS
	Debtors	recognized right of subrogation and other sureties' rights.	
1873	Statement and Reservation of Rights of Lexon Insurance Company, Sompo International Insurance and Bond Safeguard Insurance Company to the Joint Plan of Liquidation for the WMLP Debtors	• Lexon and WMLP Debtors have been in negotiations regarding certain language to be included in the order confirming the Plan. • In the event the Debtors and sureties, including Lexon, are not able to agree on such language, Lexon's objections to the WMLP Plan would include: (a) potential *Midlantic* issues in relation to the potential change of sale of its mining operations, and the WMLP Debtors being left so administratively insolvent as to prevent them from performing their environmental obligations; (b) the improper treatment of Lexon's Bonds; and (c) that the WMLP Plan is not feasible because: (i) the Oxford Sale is now in jeopardy; and (ii) sound business judgment requires the confirmed closing of the Oxford Sale before being able to confirm the Plan.	The parties are negotiating a consensual resolution regarding language in Confirmation Order.
1874	Objection of the Chubb Companies to the Joint Plan of Liquidation for the WMLP Debtors	• The Chubb Companies object to the Plan on the grounds that (i) the Plan cannot repudiate or otherwise alter, amend or modify the terms of the Chubb Assumption Agreement and must otherwise comport with the terms of the WLB Plan; and (ii) the successor to the WMLP Debtors cannot continue to receive the benefit of any portion of the insurance programs without remaining liable for the WMLP Debtors' obligations thereunder.	The parties are negotiating a consensual resolution regarding language in Confirmation Order.
1875	United Mine Workers of America's Limited Objection to the Joint Plan of Liquidation for the WMLP Debtors	• The objector argues that the Plan is not feasible unless the Kemmerer Sale closes, which cannot happen unless a satisfactory CBA is entered into with the UMWA that would govern the labor relations existing at the WMLP Debtors' Kemmerer Mine. • Although parties have been in discussions regarding the CBA, no agreement has been reached at the time of filing of the objection, and, as a consequence, the objectors contend that the plan is not feasible.	Objection should be overruled. Entry into a CBA under the APA is a waivable condition precedent.
1876	Joinder and Reservation of Rights of Argonaut Insurance Company in Connection with WMLP Plan	• Argonaut expressly joins the arguments made by Lexon and Travelers in their objections (Docket Nos. 1872 and 1873).	The parties are negotiating a consensual resolution regarding language in Confirmation Order.
1877	Objection and Reservation of Rights of Zurich American Insurance	• While WMLP Debtors, their lenders and the surety bond providers have engaged in good faith efforts to arrive at a consensual transaction, according to the Objectors, the Credit Bid Sale and	The parties are negotiating a consensual resolution regarding language in Confirmation Order.

DOCKET NO.	OBJECTION	BASIS FOR OBJECTION	RESPONSE/STATUS
	Company and Affiliate to Joint Plan of Liquidation for the WMLP Debtors	certain provisions of the Plan are (i) inconsistent with the contract between the WMLP Debtors and the objector, (ii) inconsistent with the previous orders entered by the Court and (iii) contrary to established suretyship law and certain regulatory requirements. • The objectors believe that the objection can be resolved by inclusion of certain additional language in the proposed confirmation order. • The objectors further adopt and join in on the objections filed by other sureties (Docket Nos. 1870 and 1872).	
1886	State of Ohio, Ohio Environmental Protection Agency's Limited Protective Objection to the Joint Plan of Liquidation for the WMLP Debtors	• The WMLP Debtors are party to an Adversary Proceeding that is currently pending before the Bankruptcy Court seeking a declaration that certain environmental compliance obligations were transferred to CCU Coal and Construction as part of the Oxford Sale. • If the Bankruptcy Court finds that the WMLP Debtors are responsible for the aforementioned obligations with respect to the Oxford Assets, the Plan does not adequately provide for compliance with such environmental obligations.	• The Plan does not provide for compliance because the environmental obligations were assumed by CCU. • The parties in the Oxford Adversary Proceeding are close to a consensual resolution resolving the issue in WMLP Debtors' favor.
1887	Limited Protective Objection of the United States of America (Army Corps) to the WMLP Debtors' Joint Plan of Liquidation	• The WMLP Debtors are party to an Adversary Proceeding that is currently pending before the Bankruptcy Court seeking a declaration that certain environmental compliance obligations were transferred to CCU Coal and Construction as part of the Oxford Sale. • If the Bankruptcy Court finds that the WMLP Debtors are responsible for the aforementioned obligations with respect to the Oxford Assets, the Plan does not adequately provide for compliance with such environmental obligations.	• The Plan does not provide for compliance because the environmental obligations were assumed by CCU. • The parties in the Oxford Adversary Proceeding are close to a consensual resolution resolving the issue in WMLP Debtors' favor.
1900	Limited Objection and Reservation of Rights of Westmoreland Mining Holds, LLC to the Joint Plan of Liquidation for the WMLP Debtors	• WLB Purchaser argues that confirmation of the Plan on file is premature. The WMLP Debtors and WLB Purchase are still resolving WLB Purchaser's comments to the Plan. In addition, there are pending objections from the surety providers. WLB Purchaser agrees with those Objections, as the Plan creates inconsistencies in treatment of the surety providers with the WLB Plan. • The feasibility of the Plan is also questionable, as the Plan does not provide for payment of certain administrative claims preserved by Intercompany Settlement.	• The WMLP Debtors are working diligently with all relevant parties, including the WMLP Secured Parties, to resolve the outstanding Objections, including the Objections filed by the surety providers. • The Plan provides for payment of Allowed Administrative Expense Claims that the WMLP Debtors reasonably expect to be asserted against the WMLP Debtors' Estates. *See* Plan, § II.1.A.