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

In re:	Chapter 11
Westmoreland Coal Company, et al.,[1]	Case No. 18-35672 (DRJ)
Debtors.	(Jointly Administered)

EMERGENCY JOINT MOTION OF WESTMORELAND COAL COMPANY, WESTMORELAND RESOURCE PARTNERS, LP, THE OXFORD ENTITIES AND CCU COAL AND CONSTRUCTION, LLC FOR ENTRY OF AN ORDER AUTHORIZING AND APPROVING THE SETTLEMENT OF CLAIMS ASSERTED IN ADVERSARY PROCEEDING NUMBER 19-03354

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

A HEARING WILL BE HELD ON THIS MATTER ON JUNE 5, 2019, AT 1:00 P.M. (CT) BEFORE THE HONORABLE DAVID R. JONES, 515 RUSK STREET, COURTROOM 400, HOUSTON, TEXAS 77002.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

[1] Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the Debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent in these chapter 11 cases at www.donlinrecano.com/westmoreland. Westmoreland Coal Company's service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

Westmoreland Resource Partners, LP ("WMLP"), Oxford Mining Company, LLC, Oxford Mining Company-Kentucky, LLC, Oxford Conesville, LLC, Harrison Resources, LLC, and Daron Coal Company, LLC (collectively the "Oxford Entities" and, collectively with WMLP, the "WMLP Debtor-Plaintiffs" or the "Oxford Sellers"), Westmoreland Coal Company ("WLB" and, collectively with the WMLP Debtor-Plaintiffs, the "Debtor-Plaintiffs")[2], and CCU Coal and Construction, LLC ("CCU" and, collectively with the Debtor-Plaintiffs, the "Movants") hereby jointly request, pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the entry of an order, substantially in the form attached hereto as Exhibit A: (a) approving the settlement set forth in Exhibit 1 to Exhibit A of this Emergency Joint Motion (the "Settlement"); (b) authorizing the Debtor-Plaintiffs to enter into the Settlement; and (c) granting certain related relief.

In support of this Emergency Joint Motion, the Movants further represent as follows:

Preliminary Statement

1. When the Debtors filed for bankruptcy, they and their non-debtor affiliates operated thermal coal mines in five states and two Canadian provinces. See Stein First Day Declaration ¶ 10, 19-20.[3] The WLB Debtors owned some of the U.S. mines and wholly owned the non-Debtor affiliates that own the Canadian mines. See id. ¶ 10. The WMLP Debtors owned

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2 The term "WMLP Debtors" refers to WMLP and its direct and indirect subsidiaries. The term "Debtors" refers to WLB and its direct and indirect subsidiaries, including the WMLP Debtors, each of which other than the WMLP Debtors and Westmoreland Resources GP, LLC ("WMGP") have already emerged from bankruptcy. Such Debtors that have already emerged from bankruptcy—i.e., each Debtor other than the WMLP Debtors and WMGP—shall be referred to herein as the "WLB Debtors."

3 The "Stein First Day Declaration" is the Declaration of Jeffrey S. Stein, Chief Restructuring Officer of Westmoreland Coal Company, In Support of Chapter 11 Petitions and First Day Pleadings [Docket No. 54].

the remainder of the U.S. mines. Id. Both groups of Debtors separately determined that it was in the best interest of their respective estates to sell all or substantially all of their respective assets. See, e.g., February 4, 2019 Tr. at 65:21-22 (Tywoniuk), & 78:8-13 (Grafton); Stein Confirmation Declaration ¶ 21; Puntus Confirmation Declaration ¶ 21.[4]

2. On February 5, 2019, the Court approved the sale of substantially all the Oxford Entities' assets and the WLB Debtors' Buckingham mine to CCU. 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] (the "Oxford Sale Order").[5] The Oxford Sale closed on February 11, 2019.

3. Afterward, two post-closing disputes arose under the Oxford APA and Oxford Sale Order. The parties joined those disputes in *Westmoreland Coal Co., et al. v. CCU Coal & Construction, LLC, et al.*, Adversary No. 19-03354 (the "Adversary Proceeding"). The first dispute (the "Permit Dispute") concerns the scope of what CCU purchased and the scope of liabilities CCU assumed under the Oxford Sale Order and the Oxford APA (collectively, the "Oxford Sale Documents") with respect to certain permits and licenses. After the Oxford Sale

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4 The "Stein Confirmation Declaration" is the Declaration of Jeffrey S. Stein in Support of Confirmation of the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates [Docket No. 1452]. The "Puntus Confirmation Declaration" is the Declaration of Marc D. Puntus in Support of Confirmation of the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates [Docket No. 1449].

5 All terms not otherwise defined herein have the meaning ascribed to them in the Oxford Sale Order.

closed, the State of Ohio and the Ohio Environmental Protection Agency (collectively, "Ohio") filed an application for the payment of administrative expenses with respect to approximately fifty water quality certifications/isolated wetland permits ("Ohio WQCs") (see Docket Nos. 1347 and 1523). The Debtors objected to that application based upon, among other things, the Debtors' assertion that CCU had purchased all the Ohio WQCs and assumed all liabilities of the Oxford Sellers related to the Ohio WQCs (including, without limitation, liabilities of the Oxford Sellers under related section 404 Clean Water Act permits) under the Oxford Sale Documents. CCU disagrees with the Debtor-Plaintiffs' interpretation of the Oxford Sale Documents, and asserts that it did not purchase, or acquire liability under, all of the Ohio WQCs. Accordingly, and in consultation with CCU and Ohio, the Debtor-Plaintiffs commenced an adversary proceeding captioned *Westmoreland Coal Company, et al. v. CCU Coal and Construction, LLC, et al.*, Adv. No. 19-03354 (the "Adversary Proceeding") requesting that the Court enter a declaratory judgment against CCU to resolve the Permit Dispute in favor of the Debtor-Plaintiffs. See *Complaint for Declaratory Relief* [Adversary Proceeding; Docket No. 1] ¶¶ 32-40. CCU filed the *Answer and Counterclaim of Defendant CCU Coal and Construction, LLC* [Adversary Proceeding; Docket No. 18] (the "CCU Answer and Counterclaim"), and Ohio filed the Answer and Crossclaim [Adversary Proceeding; Docket No. 14].

4. The second dispute (the "Working Capital Dispute") concerns the calculation of the Closing Net Working Capital under section 3.3 of the Oxford APA. CCU and the Oxford Sellers disputed whether a $1,000,000 payable should or should not be included in the calculation of the Closing Net Working Capital. As a result, CCU filed a counterclaim in the Adversary Proceeding requesting that the Court enter a declaratory judgment resolving the

Working Capital Dispute in its favor. See CCU Answer and Counterclaim, at Counterclaim ¶¶ 18-21.

5. Following months of good faith, arm's length discussions and negotiations between the Debtor-Plaintiffs and CCU, they have agreed, subject to Court approval, to resolve all disputes raised in the Adversary Proceeding. The Settlement Agreement provides a significant achievement for these cases because, among other things, it ensures that CCU will address any liabilities the Oxford Sellers have with respect to the permits covered by the Settlement; that the Oxford Sellers will exclude two-thirds of a payable from the calculation of Closing Net Working Capital; and that the Debtor-Plaintiffs will avoid the costs and risks attendant to litigation.

Jurisdiction and Venue

6. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. § 1409(a).

Basis for Relief

7. Settlements are a "normal part of the process of reorganization" and "oftentimes desirable and wise methods of bringing to a close proceedings otherwise lengthy, complicated and costly." Rivercity v. Herpel (In re Jackson Brewing Co.), 624 F.2d 599, 602 (5th Cir. 1980) (citations omitted) (decided under the Bankruptcy Act); see also Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996) ("To minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy.") (internal quotations omitted). Accordingly, Bankruptcy Rule 9019(a) gives a court discretion to "approve a compromise or settlement." Fed. R. Bankr. P. 9019(a); see also Moeller v. Chase Capital Corp.

(In re Age Ref., Inc.), 801 F.3d 530, 540 (5th Cir. 2015); Jackson Brewing Co., 624 F.2d at 602–03.

8. A court should exercise its discretion to approve a compromise or settlement "when the settlement is fair and equitable and in the best interest of the estate." In re Age Ref., 801 F.3d at 540 (quoting Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortg. Corp.), 68 F.3d 914, 917 (5th Cir. 1995)). In making that assessment, a court must consider three factors: (1) the probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise. In re Age Ref., 801 F.3d at 540 (citing Jackson Brewing 624 F.2d at 602); see also In re Roqumore, 393 B.R. 474, 479 (Bankr. S.D. Tex. 2008) (same). The "other factors" described in the third factor—"the so-called Foster Mortgage factors"—are (a) "the best interests of the creditors, 'with proper deference to their reasonable views'", and (b) "'the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.'" In re Age Ref., 801 F.3d at 540 (quoting Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.), 119 F.3d 349, 356 (5th Cir. 1997)); see also In re Foster Mortg. Corp., 68 F.3d at 917-18.

9. When evaluating a settlement under Bankruptcy Rule 9019, a court does not need to "conduct a mini-trial to determine the probable outcome of any claims waived in the settlement." In re Age Ref., 801 F.3d at 541 (citation omitted). Rather, a court must apprise itself of the relevant facts and law so that it can make an informed and intelligent decision. Id.; see also Watts v. Williams, 154 B.R. 56, 59 (S.D. Tex. 1993) (same). Indeed, a debtor's "burden is not high." In re Shankman, 2010 Bankr. LEXIS 619, at *9 (Bankr. S.D. Tex. Mar. 2, 2010).

A debtor "need only show his decision falls within the 'range of reasonable litigation alternatives.'" Id. (quoting In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983)); see also Cook v. Waldron, 2006 U.S. Dist. LEXIS 31411, at *10 (S.D. Tex. Apr. 18, 2006) (noting that a settlement should be approved as long as it does not fall below the lowest point in the range of reasonableness). After a debtor makes the required showing, courts generally give deference to a debtor's decision to settle a dispute. See In re Boddie, 569 B.R. 297, 303 (Bankr S.D. Ohio 2017) ("A bankruptcy court must make an informed and independent judgment as to whether a proposed compromise is fair and equitable. . . . [h]owever, [t]he [bankruptcy] judge . . . is not to substitute her judgment for that of the trustee, and the trustee's judgment is to be accorded some deference.") (internal citations and quotation marks omitted) (final three alterations in original); In re Key3Media Grp., Inc., 336 B.R. 87, 93 (Bankr. D. Del. 2005) (noting that "a court generally gives deference to a Debtors' business judgment in deciding whether to settle a matter" once a debtor "persuades the bankruptcy court that the compromise is fair and equitable").

10. The Court should approve the Settlement because it is fair and equitable and in the best interest of the Debtor-Plaintiffs' estates. *First*, the resolution of both the Permit Dispute and Working Capital Dispute is uncertain. All parties have arguments in support of their respective position and are represented by sophisticated counsel. *Second*, absent a quick resolution, the litigation could be protracted and costly. *Third*, the Settlement benefits creditors. CCU has agreed to assume any liabilities or obligations of the Oxford Sellers under the permits covered by the Settlement (subject to any defenses that the Oxford Sellers and/or CCU may have), which includes nearly all Permits and Licenses identified in the Oxford APA and additional Permits and Licenses identified by Ohio and the United States Department of Justice. While the Settlement provides that a handful of scheduled Permits and Licenses were not

transferred to CCU under the Oxford APA, those exclusions are based on CCU's reasonable belief that the Oxford Sellers do not have any obligations with respect to those Permits and Licenses. Moreover, it will clear a hurdle to confirmation of the WMLP Debtors-Plaintiffs' chapter 11 plan by resolving the objections the of the United States (see Docket No. 1887) and Ohio (see Docket No. 1886). *Fourth*, the Settlement is the product of arm's length negotiations among parties represented by sophisticated counsel.

11. Accordingly, the Movants respectfully request that the Court approve the Settlement and authorize the Debtor-Plaintiffs to enter into the Settlement.

Request for Waiver of Bankruptcy Rule 6004(h)

12. To successfully implement the Settlement, the Movants request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Movants have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h). The Movants submit that such relief is necessary given the time required to consummate the Settlement and in light of the tenor and exigencies of these chapter 11 cases.

Emergency Consideration

13. Pursuant to Bankruptcy Local Rule 9013-1(i), the Movants respectfully request emergency consideration of this Emergency Joint Motion. The Hearing on the WMLP Plan is scheduled to take place on June 5, 2019. In light of the fact that both Ohio (see Docket No. 1886) and the United States of America (see Docket No. 1887) have objected to confirming the WMLP Plan before the Adversary Proceeding is resolved, the Movants respectfully request that the Court consider the relief requested in this Emergency Joint Motion so this Settlement may also be considered on June 5, 2019.

Notice

14. The WMLP Debtors will provide notice of this Emergency Joint Motion: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the Creditors' Committee and any other statutory committee appointed in the chapter 11 cases; (c) the administrative agent under the WMLP Debtors' term loan facility due 2018; (d) the ad hoc committee of certain lenders under the WMLP Debtors' term loan facility due 2018; (e) the United States Attorney's Office for the Southern District of Texas; (f) the Internal Revenue Service; (g) the United States Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (h) the offices of the attorneys general for the states in which the Debtors operate; (i) the United States Securities and Exchange Commission; (j) the Pension Benefit Guaranty Corporation; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the WMLP Debtors submit that no further notice is necessary.

No Prior Request

15. No prior request for the relief sought in this Emergency Joint Motion has been made to this or any other court in connection with these chapter 11 cases.

WHEREFORE, the Movants respectfully request that the Court (a) enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and (b) grant such other and further relief to the Movants as the Court may deem proper.

Dated: June 2, 2019

/s/ Matthew D. Cavenaugh

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Conflicts Counsel for the WMLP Debtors and Counsel for the Conflicts Committee of the Westmoreland Resources GP, LLC Board of Directors

CERTIFICATE OF SERVICE

I certify that on June 2, 2019, I caused a copy of the foregoing document to be served by the Electronic Case Filing System of the United States Bankruptcy Court for the Southern District of Texas.

/s/ *Matthew D. Cavenaugh*
Matthew D. Cavenaugh