

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

In re:

Westmoreland Coal Company, et al.,¹

Debtors.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

Re: Docket No. _____

**ORDER AUTHORIZING AND APPROVING SETTLEMENT OF
CLAIMS ASSERTED IN ADVERSARY PROCEEDING NUMBER 19-03354**

This matter coming before the Court on the *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* (the "Motion")² for entry of an order approving the settlement, attached hereto as Exhibit 1, (the "Settlement"), the Court having reviewed the Motion and having heard the statements of counsel with respect to the Motion at a hearing before the Court (the "Hearing"); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b), (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) venue is proper before this Court pursuant to 28 U.S.C. § 1409(a), (d) the Settlement (i) is the product of good faith, arm's length negotiations among the Movants,

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.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

without collusion and (ii) is fair and equitable and in the best interests of the WMLP Debtor-Plaintiffs' estates, creditors and equity holders, (e) each of the Movants provides sufficient consideration for the transactions contemplated by the Settlement, (f) cause exists to waive the stay imposed by Bankruptcy Rule 6004(h) to the extent applicable and (g) notice of the Motion and the Hearing was sufficient under the circumstances and no further notice is necessary; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Settlement attached hereto as Exhibit 1 is approved in its entirety, pursuant to Bankruptcy Rule 9019 and section 105(a) of the Bankruptcy Code.
3. The *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") shall remain in full force and effect, except to the extent this Order is inconsistent with the Oxford Sale Order, in which case the terms of this Order shall govern; provided, however, to the extent this Order is inconsistent with paragraph 52 of the Oxford Sale Order, paragraph 52 of the Oxford Sale Order shall govern. Without limiting the generality of the foregoing: (i) Nothing in connection with CCU's assumption and transfer of the permits and licenses shall be construed as an admission of liability or any waiver of any defense as provided in the Settlement, the Oxford APA, or the Oxford Sale

Order; and (ii) CCU shall not be required to agree, attest, or affirm in any application for, or any application for approval of, transfer of a permit or license that as result of any such transfer that it is assuming obligations greater than the obligations of the Oxford Sellers under the applicable permit or license.

4. The Debtor-Plaintiffs are hereby authorized and directed to effectuate the Settlement, and the Debtor-Plaintiffs are authorized to enter into, perform, execute, and deliver all documents, and take all actions, necessary to immediately continue and fully implement the Settlement in accordance with its terms and conditions, all of which are hereby approved.

5. Upon the Debtor-Plaintiffs' entry into the Settlement, it shall be binding on them, their estates, and any trustee appointed in these cases.

6. Nothing contained in the Motion or this Order shall be deemed or construed as: (a) an admission as to the validity or priority of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) a request to assume or reject any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code; or (e) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms of this Order are immediately effective and enforceable upon its entry.

8. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

9. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order and the Settlement.

Dated: _____, 2019
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Settlement

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement Agreement") is entered into on June 2, 2019 by and between 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 with WMLP, the "Oxford Sellers"), Westmoreland Coal Company ("WLB"), and CCU Coal and Construction, LLC ("CCU" and, collectively with the Oxford Sellers and WLB, the "Parties"). For good and value consideration, the Parties hereto agree to the following:

1. The Oxford Sellers will setoff funds from the \$750,000 deposit (the "Deposit") that CCU made with WMLP pursuant to section 3.2 of the Asset Purchase Agreement by and among the Oxford Sellers and CCU, dated as of February 1, 2019 (the "Oxford APA")¹ against the amounts CCU has agreed to pay under paragraph 2 of the Settlement. The Oxford Sellers shall pay CCU twenty-three thousand three hundred thirty-three dollars and zero cents (\$23,333.00)—which amount is equal to the balance of the Deposit after the Oxford Sellers setoff funds from the Deposit against the amounts CCU has agreed to pay under paragraph 2 of the Settlement (the "Deposit Payment")—within three (3) business days after the later of (a) a final order approving this Settlement Agreement and (b) CCU providing the Oxford Sellers wire instructions for the Deposit Payment.

2. CCU will pay \$726,667 to the Oxford Sellers (the "Settlement Payment"). The Settlement Payment will satisfy CCU's payment obligation under section 3.3 of the Oxford APA.

¹ Capitalized terms not defined in the Settlement have the meanings ascribed to them in the Oxford APA.

3. The Oxford Sellers will pay real estate taxes to the appropriate Governmental Body that are Excluded Liabilities under section 2.4 of the Oxford APA.

4. The causes of action and judgment in *Oxford Mining Co., LLC v. Ohio Gathering Co., LLC*, Case No. 17-cv-418 (Ohio Common Pleas Court Belmont Cty.) are Excluded Assets under the Oxford APA.

5. Except as provided in Paragraph 7 below, the following permits and licenses are the Transferred Permits/Licenses under the Oxford APA, and CCU agrees that it assumed all of the Oxford Sellers' liabilities with respect to those Transferred Permits/Licenses (including all related liabilities that the Oxford Sellers have under the Clean Water Act and/or the Ohio Water Pollution Statute with respect to the Transferred Permits/Licenses) under the Oxford APA as if CCU were the applicable Oxford Seller:

- (a) All Permits and Licenses set forth on Schedule 2.1(b)(vi) of the Oxford APA;
- (b) Ohio EPA 401 Permit Numbers 000061 and 186006; and
- (c) United States Army Corps of Engineers 404 Permit Numbers: LRL-2008-346-gjd; LRL-2008-556-gjd; LRL-2008-1437-gjd; LRL-2009-768-A-dah; LRH-2009-00991-MUS; LRH-2010-00911-TUS; LRH-2006-02369-HOC; and LRH-2001-00684-MUS.

6. CCU's agreement that it assumed all of the Oxford Sellers' liabilities with respect to the Transferred Permits/Licenses identified in paragraph 5 of the Settlement remains subject to CCU's right to assert (as provided by the Oxford APA and the *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") any and all defenses available to either the applicable Oxford Seller or CCU in response to any allegation by a Governmental Body or third party that the applicable Oxford Seller or CCU have liability under the terms and conditions of any such permit/license. Nothing in connection with the assumption and transfer of the permits and licenses shall be construed as an admission of liability or the waiver of any such defense. CCU shall not be required to agree, attest, or affirm in any application for, or any application for approval of, transfer of a permit or license that as result of any such transfer that it is assuming obligations greater than the obligations of the Oxford Sellers under the applicable permit or license. CCU and, to the extent required by applicable law, the Oxford Sellers shall within ten (10) business days of the conditions in paragraph 11 of this Settlement being satisfied apply for transfer, or approval of transfer, of the Transferred Permits/Licenses set forth in Paragraph 5 in accordance with applicable law, unless applicable does not require such an application to be made.

7. Paragraph 5(a) of the Settlement does not apply to the following permits and licenses, which are not Transferred Permits/Licenses under the Oxford APA: (a) ODNR Permit Number D-1041-4 (Carson Island) or any permits listed in the same row as D-1041-4 on Scheduled 2.1(b)(vi) of the Oxford APA; (b) ODNR Permit Number D-2286 (Pickens) or any permits listed in the same row as D-2286 on Scheduled 2.1(b)(vi) of the Oxford APA; and (c) Ohio EPA 401 Permit Numbers 62780, 052470, 010123, 010155, and 010484, United States Army Corps of Engineers 404 Permit Numbers 199600327, 199900979, 200100269, and 20010085, and CID: 272650.

8. CCU represents and warrants that the neither WLB nor the Oxford Sellers were permittees as of the Closing Date under (a) ODNR Permit Number D-1041-4 (Carson Island) or any permits listed in the same row as D-1041-4 on Scheduled 2.1(b)(vi) of the Oxford

APA; (b) ODNR Permit Number D-2286 (Pickens) or any permits listed in the same row as D-2286 on Scheduled 2.1(b)(vi) of the Oxford APA; (c) Ohio EPA 401 Permit Numbers 62780, 052470, 010123, 010155, or 010484, United States Army Corps of Engineers 404 Permit Numbers 1996000327, 199900979, 200100269, or 20010085, or CID: 272650.

9. Section 2.3(d) of the Oxford APA, as modified by paragraph 52 of the Oxford Sale Order, is incorporated herein by reference, as if fully set forth herein.

10. To the extent that this Settlement is inconsistent with the Oxford APA, the terms of this Settlement shall govern.

11. The Settlement is conditional on the Bankruptcy Court entering: (I) one or more final orders, which have neither been reversed on appeal nor are subject to further direct appeal, (a) approving the Settlement, (b) dismissing the claims asserted against CCU in the *Complaint for Declaratory Relief* [Adv. Pro. No. 19-03354; Docket No. 1] with prejudice, and (c) dismissing the claims asserted against WLB and the Oxford Sellers in the *Answer and Counterclaim of Defendant CCU Coal and Construction, LLC* [Adv. Pro. No. 19-03354; Docket No. 18] with prejudice; and (II) an order dismissing the claims asserted against CCU in the *Answer and Crossclaim* [Adv. Pro. No. 19-03354; Docket No. 14], which order has neither been reversed on appeal nor is subject to further direct appeal.

12. The Parties will file a mutually agreeable joint motion and/or other pleading(s) with the Bankruptcy Court in *Westmoreland Coal Co., et al. v. CCU Coal & Construction, LLC, et al.*, Adversary No. 19-03354 seeking a dismissal with prejudice of the claims asserted against CCU in the *Complaint for Declaratory Relief* [Adv. Pro. No. 19-03354; Docket No. 1], a dismissal of the claims asserted against CCU in the *Answer and Crossclaim* [Adv. Pro. No. 19-03354; Docket No. 14], and a dismissal with prejudice of the claims asserted

against WLB and the Oxford Sellers in the *Answer and Counterclaim of Defendant CCU Coal and Construction, LLC* [Adv. Pro. No. 19-03354; Docket No. 18].

/s/ Matthew D. Cavanaugh

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