

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:)	
)	Chapter 11
)	
WESTMORELAND COAL COMPANY, <i>et al.</i> , ¹)	Case No. 18-35672 (DRJ)
)	
Debtors.)	(Jointly Administered)

**WLB DEBTORS' STATEMENT
REGARDING THE OMNIBUS LIMITED OBJECTION BY THE
WMLP LENDERS TO FINAL FEE APPLICATIONS AGAINST WLB DEBTORS**

Westmoreland Coal Company respectfully represents as follows in response to the *Omnibus Limited Objection by the MLP Lenders to Final Fee Applications Against WLB Debtors* [Docket No. 1815] (the "Objection"):²

Preliminary Statement

1. The Objection seeks to defer a final allocation of certain inter-estate professional fees and expenses against the WLB Debtors until the conclusion of the WMLP Debtors' chapter 11 cases.³ While styled as a "limited" opposition to the final fee applications filed against the

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 used but not defined herein shall have the meanings ascribed to such terms in the Objection or the *Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates*, dated March 1, 2019 (the "Plan").

³ While the WLB Debtors and their counsel have engaged in extensive discussions with the WMLP Lenders and their counsel throughout these chapter 11 cases, the WLB Debtors unfortunately did not receive advance notice of the WMLP Lenders' intention to file the Objection. Nor are the WLB Debtors or their counsel aware of any specific objections that the WMLP Lenders may have to any final fee application. This record notwithstanding, the WLB Debtors and their counsel are prepared to engage in good faith with all stakeholders (including the WMLP Lenders) to bring the WMLP Debtors' restructuring to a value-maximizing conclusion.

WLB Debtors (collectively, the “WLB Final Fee Applications”), the WMLP Lenders’ requested relief is far from limited: it will deny the WLB Debtors and the Professionals finality regarding millions of dollars of professional fee and expense claims with respect to a restructuring that closed in March. The relief sought in the Objection is contrary to the plain, unambiguous terms of the WLB Debtors’ confirmed and consummated Plan, the Bankruptcy Code, and the Bankruptcy Rules. Accordingly, the WLB Debtors respectfully request that the Court overrule the Objection.

Argument

2. More specifically, as set forth below, the WLB Debtors respectfully submit that the Court should overrule the Objection for at least three reasons.

3. **First**, the Objection’s argument that the Plan requires Professionals to wait until the WMLP Debtors’ cases are resolved to have finality for their fees and expenses is inconsistent with the plain, unambiguous terms of the Plan regarding the final fee application process. The Plan provides that its terms “shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to conflict of laws principles.” *See* Plan Art. I.D. New York law recognizes the axiomatic principle that “definitive, particularized contract language takes precedence over expressions of intent that are general, summary, or preliminary.” *John Hancock Mut. Life Ins. Co. v. Carolina Power & Light Co.*, 717 F.2d 664, 669 n.8 (2d Cir. 1983). Here, while the Plan is subject to the intercompany settlement, the Plan expressly **requires** Professionals to file final fee applications within 30 days of the effective date. *See* Plan Art. II.B.1. Furthermore, the Plan contemplates that the Court will adjudicate, and that the WLB Debtors will “promptly” satisfy any allowed fee and expense claims under, any final fee application. *See* Plan Art. II.B.2 (requiring the professional fee escrow to release amounts held “in trust” for Professionals “as soon as reasonably practicable after such Claims are Allowed by a Final Order”).

Moreover, the Plan *does not* provide the WMLP Lenders with an open-ended, potentially unending, right to challenge the allocation of professional fee and expense claims until there is a hearing on final fee applications for the WMLP Debtors. Accordingly, in light of the Plan's express terms, the WLB Debtors respectfully request that the Court deny the Objection.

4. **Second**, the WMLP Lenders waived their right to object to the allowance, on a final basis, of any fees, expenses, or other costs to the WLB Debtors under the WLB Final Fee Applications. More specifically, the WLB Final Fee Applications include: (a) detailed time entries of the work performed for the WLB Debtors; (b) information about the expenses and costs incurred by the Professionals in connection with their services; and (c) how each Professional allocated their fees and expenses among the WLB Debtors and WMLP Debtors consistent with the agreed-upon allocation provisions of the intercompany settlement.⁴ And the WLB Debtors are unaware of any unresolved formal or informal objection from any party in interest (including the WMLP Lenders) to any application's proposed allocation of fees, expenses, and costs among the WLB Debtors and WMLP Debtors. Nor has any party in interest (including the WMLP Lenders) requested additional information from any Professional regarding its proposed allocation of fees, expenses, and costs. Simply put, the time has come—and gone—for parties in interest to object to the WLB Final Fee Applications. The WMLP Lenders' Objection requests a reservation of rights, but the WMLP Lenders did not object to the allowance of any fees or expenses prior to the

⁴ The intercompany settlement provided that (a) the WMLP Debtors would pay \$1 million in fees and expenses incurred in connection with the section 1113 motion and all bargaining relating thereto, and the WLB Debtors would pay the remainder, (b) the WLB Debtors would pay the entirety of the fees and expenses incurred in connection with the section 1114 motion and all bargaining relating thereto, (c) the WMLP Debtors would pay 70% of the fees and expenses relating to the Tender Offer (as defined in the intercompany settlement term sheet), and the WLB Debtors would pay the remaining 30%, and (d) all other shared expenses would be allocated 70% to the WLB Debtors, and 30% to the WMLP Debtors. *See* Intercompany Settlement Term Sheet, pg. 12 [Docket No. 1548].

objection deadline. Accordingly, the WMLP Lenders waived the right to continue to object to final approval of any such application.

5. **Finally**, the Objection is inconsistent with the Bankruptcy Code, which contemplates allowance on a final basis of estate professional fee and expense claims. *See* 11 U.S.C. § 330. Moreover, the Objection is inconsistent with federal bankruptcy principles, which favor finality for debtors (including with respect to the final allowance of professional fee and expense claims). *See, e.g., In re Santa Fe Med. Grp., LLC*, 557 B.R. 223, 232 (Bankr. D.N.M. 2016) (in refusing request to have professionals disgorge payments made pursuant to orders granting final fee applications, ruling that “the final nature of the fee orders entered in this case precludes such a possibility.”); *In re Rockaway Bedding, Inc.*, 454 B.R. 592, 597 (Bankr. D.N.J. 2011) (denying motion for disgorgement of fees awarded pursuant to final fee applications because they were “final payments.”); *In re St. Joseph Cleaners, Inc.*, 346 B.R. 430, 440 (Bankr. W.D. Mich. 2006) (denying motion for disgorgement of fees awarded after the granting of final fee applications); 11 U.S.C. § 330(a)(1) (providing that a court may award “reasonable compensation for actual, necessary services” to estate professionals after notice and a hearing).

6. The Bankruptcy Code’s policy in favor of finality and closure weighs against the Objection. The WLB Debtors confirmed their prearranged Plan over two months ago. The Plan Administrator is winding down the WLB Debtors’ affairs. That process cannot proceed unless the WLB Debtors have finality regarding their allocation of shared inter-estate professional fees and expenses. The Professionals, likewise, are entitled to closure regarding their efforts in connection with the WLB Debtors’ restructuring. The WLB Debtors and the Professionals have played by the rules and are entitled to a final order regarding the WLB Final Fee Applications. Final approval

of the fee applications should not be subject to a contingency controlled by the WMLP Lenders. The Court should deny the Objection.

Reservation of Rights

7. Nothing herein shall be considered a waiver of any rights, claims, or defenses of any party (including the WLB Debtors) with respect to any matter in the above-captioned chapter 11 cases, including with respect to any request for payment of any fee, expense, or cost claim of any professional.

Conclusion

8. For all the foregoing reasons, the WLB Debtors respectfully request that the Court approve the WLB Final Fee Applications and deny the relief requested in the Objection, and grant such other relief as is just and proper under the circumstances.

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Houston, Texas

June 3, 2019

/s/ Matthew D. Cavanaugh

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Certificate of Service

I certify that on June 3, 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/ Matthew D. Cavanaugh

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