

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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

**EMERGENCY MOTION OF THE WMLP DEBTORS FOR ENTRY OF FINAL DECREE CLOSING THE WMLP DEBTORS' CHAPTER 11 CASES**

**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. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. 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 HAS BEEN SET ON THIS MATTER ON JUNE 5, 2019, AT 1:00 P.M., PREVAILING CENTRAL TIME, IN COURTROOM 400, 4TH FLOOR, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, 515 RUSK STREET, HOUSTON, TEXAS 77002.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

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<sup>1</sup> 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](http://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") and WMLP's direct and indirect subsidiaries (collectively with WMLP, the "WMLP Debtors"),<sup>2</sup> as debtors and debtors in possession in the above-captioned cases, hereby submit this motion (this "Emergency Motion") for entry of a final decree substantially in the form attached hereto as Exhibit A closing the WMLP Debtors' chapter 11 cases (the "WMLP Debtors' Chapter 11 Cases"), and granting related relief.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory basis for the relief requested herein is § 350(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 3022 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

### **RELIEF REQUESTED**

4. The hearing to confirm the *Joint Plan of Liquidation for the WMLP Debtors* (as modified, amended, or supplemented from time to time, the "WMLP Plan") [Docket No. 1612] is scheduled for June 5, 2019. The WMLP Debtors expect the Effective Date as defined under the WMLP Plan) will occur as soon as June 14, 2019 (the "WMLP Plan Effective Date"), at which point the WMLP Plan will have been substantially consummated. After that time, the only material remaining matters anticipated to require resolution in connection with the

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<sup>2</sup> The "WMLP Debtors" consist of the following entities: Westmoreland Resources GP, LLC; Westmoreland Resource Partners, LP; Westmoreland Kemmerer, LLC; 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.

WMLP Debtors' Chapter 11 Cases are filing and obtaining approval of final fee applications as well as the reconciliation of certain claims.

5. Leaving the WMLP Debtors' Chapter 11 Cases open past the WMLP Plan Effective Date would impose significant costs on the WMLP Debtors' estates. Accordingly, the WMLP Debtors request entry of a final decree, substantially in the form attached hereto (the "Final Decree"), closing the WMLP Debtors' Chapter 11 Cases at the confirmation hearing, subject to occurrence of the WMLP Plan Effective Date. Although the WMLP Debtors fully expect to achieve confirmation and effectiveness of the WMLP Plan on their proposed timeline, the WMLP Debtors may request to reset any hearing on, modify the relief requested in or withdraw this Emergency Motion to the extent confirmation of the WMLP Plan were delayed or denied or the WMLP Plan Effective Date is delayed.

#### **BACKGROUND**

6. On October 9, 2018 (the "Petition Date"), each WMLP Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The WMLP Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. On October 18, 2018, the United States Trustee for the Southern District of Texas appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code [Docket No. 206] (the "Creditors' Committee").

7. On October 9, 2018, the Court entered that certain order [Docket No. 71] directing joint administration of the WMLP Debtors' estates along with the estates of Westmoreland Coal Company ("WLB") and each of its direct and indirect debtor subsidiaries other than the WMLP Debtors (WLB, with its direct and indirect debtor subsidiaries other than

the WMLP Debtors, the "WLB Debtors"), with the lead case of Westmoreland Coal Company, Case No. 18-35672 (the "Lead Case").

8. On March 2, 2019, the Court entered the *Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates* [Docket No. 1561] confirming the chapter 11 plan of the WLB Debtors (the "WLB Plan"), and on March 15, 2019, the WLB Plan went effective.<sup>3</sup>

9. On March 27, 2019, the Court entered the *Final Decree Closing Certain of the Chapter 11 Cases* (the "WLB Final Decree") [Docket No. 1671], closing the WLB Debtors' cases other than the Lead Case and the case of Westmoreland Coal Company Asset Corp., Case No. 18-35689 (together, with the Lead Case, the "Open WLB Cases"). The Open WLB Cases will remain open until certain outstanding issues therein are resolved and the Court enters a final decree related thereto.

10. Prior to entry of the Final Decree closing the WMLP Debtors' Chapter 11 Cases, the WMLP Debtors are seeking confirmation of the WMLP Plan at the hearing set for June 5, 2019. The WMLP Debtors anticipate that the WMLP Plan Effective Date will occur as soon as June 14, 2019, at which point the WMLP Plan will be substantially consummated.

11. Following the occurrence of the WMLP Plan Effective Date, the Liquidation Trustee (as defined under the WMLP Plan) will, in part, focus on resolving any remaining claims and may file one or more claims objections as appropriate. Additionally, pursuant to the WMLP Plan, fee applications for retained Professionals (as defined in the WMLP Plan) must be filed no later than 30 days after the WMLP Plan Effective Date. Finally, although certain adversary

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<sup>3</sup> See Notice of (I) Entry of Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates and (II) Occurrence of the Plan Effective Date [Docket No. 1608].

proceedings related to the WMLP Debtors' estates remain outstanding as of the date hereof, the WMLP Debtors anticipate such matters being resolved in the near term, and such matters have been filed in the Lead Case, so the WMLP Debtors' cases need not remain open pending the resolution thereof.

12. Beyond the matters noted above, the WMLP Debtors do not anticipate any additional substantive or other significant contested matters arising in the WMLP Debtors' Chapter 11 Cases, although miscellaneous motions, applications, pleadings, objections, or other matters or proceedings may arise from time to time, including the interpretation or enforcement of orders of the Court. These remaining matters may be administered in the Lead Case notwithstanding the closure of the WMLP Debtors' Chapter 11 Cases. As such, the WMLP Debtors do not expect the closing of the WMLP Debtors' Chapter 11 Cases to have any substantive impact on any party-in-interest.

#### **BASIS FOR RELIEF**

##### **The Court Should Close the WMLP Debtors' Chapter 11 Cases Because They Will Be Fully Administered as of the WMLP Plan Effective Date.**

13. Section 350(a) of the Bankruptcy Code provides: "After an estate is fully administered and the court has discharged the trustee, the court shall close the case." 11 U.S.C. § 350(a). Bankruptcy Rule 3022, which implements section 350 of the Bankruptcy Code, further provides: "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case." Fed. R. Bankr. P. 3022.

14. The term "fully administered" is not defined in the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules. The Advisory Committee Notes to Bankruptcy

Rule 3022 (the "Advisory Committee Notes"), however, set forth the following non-exclusive factors for consideration in determining whether a case has been fully administered:

- (a) whether the order confirming the plan has become final;
- (b) whether deposits required by the plan have been distributed;
- (c) whether the property proposed by the plan to be transferred has been transferred;
- (d) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan;
- (e) whether payments under the plan have commenced; and
- (f) whether all motions, contested matters, and adversary proceedings have been finally resolved.

Fed. R. Bankr. P. 3022, Advisory Comm. Note (1991). Courts look "to the advisory committee's notes on Bankruptcy Rule 3022's [sic] in seeking guidance as to the meaning of 'fully administered.'" *In re JCP Props., Ltd.*, 540 B.R. 596, 605 (Bankr. S.D. Tex. 2015).

15. Courts in the Fifth Circuit adopt the view that "these factors are not exhaustive nor must all six factors be present to establish that a case should be closed," and instead consider such factors merely guidance in determining when a case is fully administered. *See In re Valence Tech, Inc.*, No. 12-11580-CAG, 2014 WL 5320632, at \*3 (Bankr. W.D. Tex. Oct. 17, 2014); *see also In re SandRidge Energy, Inc.*, No. 16-32488 (DRJ) (Bankr S.D. Tex. Mar. 27, 2018) (noting in the motion for final decree that all factors need not be present, which was ultimately approved); *In re AmeriForge Grp., Inc.*, No 17-32660 (DRJ) (Bankr. S.D. Tex.

Sept. 7, 2017) (same); *In re Idearc Inc.*, No. 09-31828 (BJH) (Bankr. N.D. Tex. Nov. 22, 2011) (same).<sup>4</sup>

16. In addition to the factors set forth in the Advisory Committee Note, courts have considered whether the chapter 11 plan has been substantially consummated. *See, e.g., JCP Properties*, 540 B.R. at 605 (commenting that "substantial consummation is the pivotal question here to determine the propriety of closing the [case]"); *see also In re CoServe, LLC*, No. 01-48684, 2002 Bankr. LEXIS 2010, at \*31 (Bankr. N.D. Tex. Oct. 25, 2002) (providing in the confirmation order that the debtors, "after substantial consummation as defined under 11 U.S.C. § 1101(2), shall File an application for final decree"); *In re Gates Cmty. Chapel of Rochester, Inc.*, 212 B.R. 220, 224 (Bankr. W.D.N.Y. 1997) (considering substantial consummation as a factor in determining whether to close a case). Moreover, courts agree that entry of a final closing decree is only an administrative task that does not determine the substantive rights of the parties. *See In re Clayton*, 101 F.3d 697, at \*1 (5th Cir. 1996) (Table Case) ("[E]ntry of a final decree is merely a perfunctory, administrative event and nothing more than a ministerial housekeeping act which was never designed to determine with finality the substantive rights of parties involved in a chapter 11 case.") (alteration in original) (internal quotation marks and citations omitted); *In re Gould*, 437 B.R. 34, 38 (Bankr. D. Conn. 2010) (noting that a final decree "simply delineates on the docket that the case is closed; it represents the administrative conclusion of a case for record keeping purposes").

17. As noted above, all of these factors need not be present before a court will enter a final decree. *See Valence Tech, Inc.*, 2014 WL 5320632, at \*3 ("[T]hese factors are not exhaustive nor must all six factors be present to establish that a case should be closed."); *see also*

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<sup>4</sup> Because of the voluminous nature of the motions and orders cite herein, such pleadings have not been attached to this Emergency Motion. Copies of these pleadings are available upon request of the WMLP Debtors' counsel.

*Walnut Assocs. v. Saidel*, 164 B.R. 487, 493 (E.D. Pa. 1994) ("[A]ll of the factors in the Committee Note need not be present before the Court will enter a final decree."). For example, pending adversary proceedings do not necessarily preclude a court from entering a final decree. *See Valence Tech.*, 2014 WL 5320632, at \*4 ("[I]t is well-established that '[t]he continuation of an adversary proceeding . . . is insufficient by itself to keep a case from being considered 'fully administered.'" (quoting *In re Union Home & Indus., Inc.*, 375 B.R. 912, 918 (B.A.P. 10th Cir. 2007)) (internal quotation marks and citation omitted); *see also In re JMP-Newcor Int'l, Inc.*, 225 B.R. 462, 465 (Bankr. N.D. Ill. 1998) (entering a final decree when an adversary proceeding was pending and the debtors still needed to make certain distributions).

18. Furthermore, bankruptcy courts in the Fifth Circuit have entered final decrees and closed cases despite certain claims being unpaid, including the cases of the WLB Debtors other than the Open WLB Cases. *See, e.g., In re Westmoreland Coal Company*, No. 18-35672 (DRJ) (Bankr. S.D. Tex. Mar. 17, 2019) (entering final decree closing certain of the debtors' chapter 11 cases notwithstanding the pendency of certain claims); *In re SandRidge Energy, Inc.*, No. 16-32488 (DRJ) (Bankr. S.D. Tex. Apr. 20, 2018) (same); *In re AmeriForge Group Inc.*, No. 17-32660 (DRJ) (Bankr. S.D. Tex. Sept. 29, 2017) (same).

19. Here, the foregoing factors weigh strongly in favor of closing the WMLP Debtors' Chapter 11 Cases. As of the date that the Final Decree becomes effective, the WMLP Plan Effective Date will have occurred, and the WMLP Plan will have been substantially consummated. Therefore, the WMLP Debtors' Chapter 11 Cases will have been "fully administered." Any assets remaining with the WMLP Debtors' estates after the consummation of the various asset sales will have transferred to the Liquidation Trust (as defined in the WMLP Plan), certain of the WMLP Debtors will have dissolved, and the Liquidation Trustee will have



assumed the role of managing, liquidating and distributing the remaining estate assets under the WMLP Plan. Although the WMLP Debtors acknowledge that the payment of certain claims may still be pending in accordance with the terms of the WMLP Plan, the WMLP Debtors submit that such claims will be paid by the Liquidation Trustee in accordance with the Bankruptcy Code and the WMLP Plan and, thus, the WMLP Debtors' Chapter 11 Cases need not remain open for such purposes.

20. Moreover, to the extent any adversary proceeding remains outstanding as of the WMLP Plan Effective Date, the WMLP Debtors believe such action will be resolved shortly thereafter and can remain pending as part of the Lead Case without the need for the WMLP Debtors' Chapter 11 Cases to remain open. Furthermore, courts in this jurisdiction have closed cases in the past regardless of pending adversary proceedings (*see Valence Tech, Inc.*, 2014 WL 5320632, at \*4), and "[t]he court should not keep [a] case open only because of the possibility that the court's jurisdiction may be invoked in the future." Fed. R. Bankr. Advisory Comm. Note (1991). To the extent the WMLP Debtors' estates may be necessary at some future time related to any such adversary proceeding, entry of final decrees closing the WMLP Debtors' Chapter 11 Cases is without prejudice to any party-in-interest's rights to petition the Court to reopen any of the WMLP Debtors' Chapter 11 Cases pursuant to section 350(b) of the Bankruptcy Code. Accordingly, closing the WMLP Debtors' Chapter 11 Cases and entering the Final Decree is appropriate.

#### **Emergency Consideration**

21. Pursuant to Bankruptcy Local Rule 9013-1(i), the WMLP Debtors respectfully request emergency consideration of this Emergency Motion. The hearing on the WMLP Plan is scheduled to take place on June 5, 2019. Because the WMLP Debtors anticipate that the WMLP

Plan Effective Date will occur so closely after the hearing on the WMLP Plan and no reason exists to keep the WMLP Debtors' cases open thereafter, the WMLP Debtors respectfully request that the Court consider the relief requested in this Emergency Motion so it may also be considered on June 5, 2019.

**Notice**

22. The WMLP Debtors will provide notice of this Emergency Motion to the following parties or their respective counsel: (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 WMLP Debtors conduct business; (h) the offices of the attorneys general for the states in which the WMLP 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.

WHEREFORE, the WMLP Debtors respectfully request that this Court grant this Emergency Motion, and enter a Final Decree closing the WMLP Debtors' Chapter 11 Cases, and grant to them such other and further relief as is just and proper under the circumstances.

Houston, Texas  
June 3, 2019

*/s/ Matthew D. Cavanaugh*

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**CERTIFICATE OF SERVICE**

I hereby 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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Matthew D. Cavanaugh