

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
WESTMORELAND COAL COMPANY, <i>et al.</i>	§	Case Nos. 18-35672 (DRJ)
	§	
Debtors.	§	(Jointly Administered)
	§	

**DECLARATION OF CHRISTOPHER K. SEGLEM IN SUPPORT OF
RESPONSE OF CREDITOR CHRISTOPHER K. SEGLEM TO DEBTORS' SEVENTH
OMNIBUS OBJECTION TO CERTAIN PROOFS OF CLAIM**

I, Christopher K. Seglem, declare:

1. The matters stated below are made and based upon my personal knowledge, except for those matters stated upon information and belief, and as to those matters, I believe them to be true. If called as a witness, I could and would competently testify to the matters set forth below.

2. I have filed four proofs of claim in these cases based upon amounts due and owing to me under the Westmoreland Coal Company Supplemental Executive Retirement Plan ("SERP"). A true and correct copy of the SERP is attached as **Exhibit A**.

3. The claims were filed against Westmoreland Coal Sales Company, Inc., Westmoreland Energy, LLC, Westmoreland Resources, Inc., and Westmoreland Coal Company.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 31, 2019, at Arnold, MD.

Christopher K. Seglem
CHRISTOPHER K. SEGLEM

EXHIBIT A

**WESTMORELAND COAL
COMPANY**

**SUPPLEMENTAL EXECUTIVE
RETIREMENT PLAN**

Effective January 1, 1992

WHEREAS, Westmoreland Coal Company ("Company") initially adopted the Westmoreland Coal Company and Affiliated Companies Plan of Deferred Compensation ("Deferred Compensation Plan") on September 9, 1986, to be effective beginning January 1, 1987; and

WHEREAS, the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Internal Revenue Code of 1986, as amended ("Code"), require that limits be set on the maximum benefits which may be paid from and the maximum compensation which may be taken into account under a tax-qualified defined benefit pension plan with respect to a participant of such a plan; and

WHEREAS, the Westmoreland Coal Company and Affiliated Companies Employees' Retirement Plan ("Retirement Plan") limits the items of compensation which may be considered in calculating Participants' retirement benefits; and

WHEREAS, a Participant's benefit payable from the Retirement Plan may otherwise be limited due to the Participant's age at the time he becomes actively employed by the Company; and

WHEREAS, the Company intends to adopt a supplemental executive retirement plan, to provide retirement benefits that have been limited under the Retirement Plan, solely by reason of the aforementioned restrictions;

NOW, THEREFORE, effective January 1, 1992, the Company hereby rescinds the Deferred Compensation Plan and adopts in its place, this Westmoreland Coal Company Supplemental Executive Retirement Plan ("Plan") for select executives meeting the eligibility requirements stated herein ("Participants") for the purpose of providing for the payment to each Participant that part of any benefit payable from the Retirement Plan which cannot be paid to the Participant due to the aforementioned restrictions.

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ARTICLE I
DEFINITIONS

1.01 "Actuarial Equivalent" means a benefit that is of equivalent current value to the benefit which would otherwise have been provided under the circumstances, determined on the basis of the factors specified in Appendix A of the Retirement Plan.

1.02 "Affiliated Company" means Westmoreland Coal Sales Company, Westmoreland Resources, Inc., Westmoreland Energy, Inc., Cleancoal Terminal Company, Criterion Coal Company, Eastern Coal & Coke Company and Roda-Dendron Coal Company, and any other affiliated company that adopts this Plan with the approval of the Committee.

1.03 "Beneficiary" means the Participant's Spouse, who shall be the recipient of benefits payable under this Plan in the event of such Participant's death.

1.04 "Code" means the Internal Revenue Code of 1986, as amended.

1.05 "Committee" means the Compensation and Benefits Committee of the Board of Directors.

1.06 "Company" means Westmoreland Coal Company and its Affiliated Companies.

1.07 "Compensation" means a Participant's annual pay that is used in determining the Participant's benefit under the Retirement Plan, and shall include, for purposes of determining a Participant's benefit under this Plan, the annual bonus actually paid to and received by the Participant, if any. In addition, a Participant's Compensation shall not be restricted by the limitations imposed by section 401(a)(17) of the Code.

1.08 "Disability" means a "Total and Permanent Disability" as defined in the Retirement Plan.

1.09 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

1.10 "Final Average Compensation" means, for purposes of determining benefits under this Plan, "Average Monthly Compensation" as defined in the Retirement Plan, with the exception that: i) Compensation as it is defined herein shall be used, and ii) the average of the Participant's five highest annual bonuses included in Compensation under Section 1.07 of this Plan, during the Participant's final seven years of service prior to the earlier of the Participant's actual date of retirement or Normal Retirement Date, whichever shall first occur.

1.11 "Normal Retirement Date" means, for purposes of determining the date a Participant is entitled to begin receiving benefits under this Plan, a Participant's Normal Retirement Date as determined under the Retirement Plan.

1.12 "Participant" means any employee of the Company who meets the eligibility requirements of Article II of this Plan.

1.13 "Plan" means the Westmoreland Coal Company Supplemental Executive Retirement Plan as amended from time to time.

1.14 "Retirement Plan" means the Westmoreland Coal Company and Affiliated Companies Employees' Retirement Plan as amended from time to time.

1.15 "Spouse" means a Participant's surviving husband or wife to whom the Participant was lawfully married at the time of the Participant's death, and who qualifies as a spouse for purposes of the surviving spouse's benefit under the Retirement Plan.

1.16 "Termination of Employment" means any cessation of the Participant's employment with the Company, for reasons other than the Participant's retirement, death or Disability.

ARTICLE II

ELIGIBILITY

2.01 Senior management of the Company designated as "Group A" executives and certain other key individuals who are specifically designated by the Committee shall be eligible to receive a benefit under this Plan. In no event shall an employee who is not entitled to a benefit under the Retirement Plan be eligible for or receive a benefit under this Plan unless otherwise provided by the Committee pursuant to Section 4.02 of this Plan.

2.02 Notwithstanding anything contained herein to the contrary, the Committee shall have full discretion and authority to resolve any issues that may arise concerning eligibility.

2.03 The Committee may in its discretion determine that a Participant is no longer eligible to participate in this Plan. Any such Participant who was vested under Article III of this Plan prior to the Committee's determination of current non-eligibility shall be entitled to a benefit, if any, in accordance with Article IV of this Plan. For purposes of determining a Participant's benefit under this Section, the gross benefit amount in Section 4.01 (a) of this Plan shall be calculated as of the date the Committee determines the Participant to be ineligible, but the offsetting amount in section 4.01(b) shall be calculated as of the date the Participant actually retires.

ARTICLE III

VESTING

3.01 In the event of a Participant's Termination of Employment prior to the earliest date such Participant would be eligible to retire under the Retirement Plan (at age 55 with 10 years of service), the Participant shall not be entitled to any benefits under this Plan and the Company shall have no further obligation hereunder with respect to the Participant or his Beneficiary unless otherwise provided by the Committee pursuant to Section 4.02 of this Plan.

3.02 Upon attainment of the earliest retirement date under the Retirement Plan, a Participant who is actively employed by the Company shall have a 100% vested interest in all benefits which the Participant is entitled to receive under this Plan.

3.03 An actively employed Participant who incurs a Disability shall have a 100% vested interest in all benefits which the Participant is entitled to receive under this Plan provided that at the time of the Disability the Participant has been awarded a disability pension benefit under the Retirement Plan.

3.04 In the event that an actively employed Participant who is not vested under this Plan incurs a Disability, his right to a future benefit under this Plan shall not be forfeited due to such Disability:

- (1) Such Participant's period of Disability shall not be included in determining the Participant's service for any purpose under this Plan.
- (2) Upon return to active employment following a Disability, such Participant shall resume participation in this Plan and shall retain any service credit the Participant earned under this Plan prior to the Disability, subject to the approval of the Committee.
- (3) In the event that a Participant who is vested under the Retirement Plan attains Normal Retirement Date during a period of Disability, he shall become vested in the benefits payable to him under this Plan.
- (4) In the event such Participant incurs a Termination of Employment or dies during a period of Disability and prior to Normal Retirement Date, the Participant shall forfeit any benefit to which he was entitled under this Plan.

3.05 Notwithstanding anything contained herein to the contrary, amounts in which a Participant is otherwise vested shall be forfeited to the extent that a Participant engages in activity which the Committee determines to be competitive in nature against the Company, or if the Participant is terminated for gross or willful misconduct which is defined as an act or acts constituting larceny, fraud, gross negligence, crime or crimes, moral turpitude in the course of employment or willful and material misrepresentation to the directors or officers of the Company. If a determination to this effect is made while the Participant is actively employed, the Participant's benefits shall be voided and may not be reinstated; if this is determined after benefits under this Plan have commenced, all remaining payments shall cease. The Committee shall have full and final discretion to determine whether any activity constitutes competitive activity under this Plan, regardless of the actual or speculative impact, however measured, such activity has or may have upon the Company. For purposes of this

Plan, activity which shall not be deemed competitive includes; a) a five percent (5%) or less ownership interest in any other company, b) membership or participation in any board of directors of a charitable organization, or c) any activity which would otherwise be considered competitive under this Plan that occurs two (2) or more years after the earlier of the Participant's Termination of Employment or commencement of benefits under this Plan.

ARTICLE IV

BENEFIT AMOUNT

4.01 The benefit which a Participant or his Beneficiary, if any, shall be entitled to receive under this Plan shall be equal the excess, if any, of (a) less (b), where:

(a) is the benefit for normal retirement and disability benefits, as they may apply, that would be payable to the Participant under the Retirement Plan using Compensation and Final Average Compensation as defined in this Plan, without the maximum benefit limitations imposed by Section 415 of the Code, and including additional service credit, if any, pursuant to Section 4.02 of this Plan, and

b) is the actual benefit payable to the Participant under the Retirement Plan.

4.02 The Committee, in its discretion may credit a Participant with service in addition to that earned under the provisions of the Retirement Plan, to account for periods of service that the Participant earned with prior employers, which shall be taken into account in determining a Participant's benefit under this Plan. Any crediting of additional service shall be effective only if granted in writing by the Committee or its duly authorized representative. The Committee will reduce the benefit of any Participant or Beneficiary who is granted additional service by an amount equal to the benefits the Participant or Beneficiary is entitled to participant's prior employers' retirement plans.

ARTICLE V

FORM AND TIMING OF PAYMENT

5.01 Benefits under this Plan shall commence and be payable at the same time and in the same form as provided under the section of the Retirement Plan describing payment of benefits.

ARTICLE VI

DEATH OF PARTICIPANT

6.01 In the event that a married Participant is not eligible (is not age 55 and does not have 10 years of service with the Company) at the time of death to otherwise receive benefits under this Plan, the Beneficiary shall never be eligible to receive a benefit under this Plan.

6.02 The amount of benefit to which the Beneficiary is entitled shall be determined in accordance with the supplemental retirement benefit calculation procedure provided in Article IV of this Plan. The calculation of a Beneficiary's benefit pursuant to this Section 6.02 shall take into account any Actuarial Equivalent reductions under the Retirement Plan that may be applicable.

6.03 A Participant's Spouse shall be the only Beneficiary entitled to a benefit under this Plan due to the death of the Participant. Upon the death of the Spouse all benefit payments under this Plan shall cease

ARTICLE VII

FUNDING

7.01 All benefits payable under this Plan are derived solely from the general assets of the Company and shall remain at all times, subject to the claims of the creditors of the Company. The Committee, in its discretion may set up reserves on its books and records for the provision of benefits hereunder and may segregate assets for such purposes. However, such actions shall in no way be construed to constitute the establishment of a trust or the creation of a preference in favor of Participants or their Beneficiaries.

7.02 The provisions of Section 7.01 notwithstanding, the Committee reserves the right to establish a trust or trusts, as the case may be, purchase annuities or take such other action, specifically for the purpose of providing funds for, or securing benefits payable under this Plan.

ARTICLE VIII

GENERAL PROVISIONS

The rights and obligations of the parties under this Plan are subject to the following terms and conditions:

8.01 No benefit or payment under this Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, whether voluntary or involuntary, nor shall this Plan be in any way liable for or subject to the debts,

contracts, liabilities, engagements or torts of any person entitled to such benefit or payment, except to such extent as may be required law and/or pursuant to the terms of a domestic relations order, which for purposes of this Plan shall be recognized in accordance with the terms and conditions of the Retirement Plan regarding qualified domestic relations orders.

8.02 The establishment of this Plan or participation in it shall not be construed to confer upon the Participant the legal right to be retained in the employ of the Company, or give the Participant or Beneficiary, or any other person, any right to any payment whatsoever, except to the extent of the benefits provided for under this Plan. The Participant shall remain subject to discharge to the same extent as if this Plan had never been adopted.

8.03 If a court of competent jurisdiction determines that the Participant or any other person entitled to benefits under this Plan is incompetent by reason of physical or mental disability, the Committee shall have the power to cause the payments becoming due to such Participant or other person to be made to a court appointed guardian without any responsibility to see to the application of such payments. Any payment made pursuant to such power shall, as to the amount of such payment, operate as a complete discharge of the Company, of its obligations under this Plan.

8.04 If at any time any doubt exists as to the identity of any person entitled to any payment under this Plan or the amount or time of such payment, the Committee shall be entitled to hold such sum as a segregated amount in trust until such identity, amount or time is determined or until an order of a court of competent jurisdiction is obtained. The Committee shall also be entitled to pay such sum into court in accordance with the appropriate rules of law.

8.05 The benefits of the Participant or any other person entitled to benefits under this Plan shall be in addition to any benefits paid or payable to, or on account of the Participant or such other person under any other pension, disability, equity, annuity or pension plan or policy whatsoever. Nothing herein contained shall in any manner modify, impair or affect any existing or future rights of the Participant to receive any employee benefits to which he would otherwise be entitled or to participate in any current or future retirement plan of the Company, or any other supplemental arrangement which constitutes a part of the Company's regular compensation structure.

8.06 The books and records to be maintained for the purpose of this Plan shall be maintained by the Company at its expense and shall be subject to the supervision and control of the Committee. All expenses of administering this Plan shall be paid by the Company either from funds set aside or earmarked under the Plan or from other funds.

8.07 No liability shall attach to or be incurred by any officer or director of the Company under or by reason of the terms, conditions and provisions contained in this Plan, or for the acts or decisions taken or made thereunder or in connection therewith. As a condition precedent to the establishment of this Plan or the receipt of benefits thereunder, or both, such liability, if any, is expressly waived and released by the Participant and by any and all persons claiming under or through the Participant or any other person. Such waiver and release shall

be conclusively evidenced by any act of participation in or the acceptance of benefits under this Plan.

8.08 All questions of interpretation, construction, application or right of any Participant and/or any other person entitled to benefits under this Plan, arising under the Plan shall be decided in good faith by the Committee, whose decisions shall be final and conclusive upon all persons.

8.09 Any notices required or permitted to be given under this Plan shall be sufficient if in writing and if sent by registered or certified mail to the Participant at his last-known address as shown on the Company's records, or to the Company at its principal office, as the case may be. If the Participant is an active employee, notice shall be sufficient if sent by interoffice mail.

8.10 This Plan shall be governed by and construed and administered under the laws of the Commonwealth of Pennsylvania except to the extent superseded by ERISA.

8.11 This Plan shall be binding upon the Company, its successors and assigns. In the event of a merger, consolidation, or reorganization involving the Company, this Plan shall continue in force and become an obligation of the Company's successors. 8.12 If any provision of this Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included therein.

8.13 The Article headings contained herein are provided as a matter of convenience and for reference and in no way define, limit, enlarge or describe the scope or intent of the Plan nor in any way shall they affect the Plan or the construction of any provision thereof.

8.14 The Company reserves the right to modify, alter or amend the Plan from time to time to any extent that it may deem advisable, and shall have the power to terminate the Plan at any time. No such modification, alteration, amendment or termination shall have the effect of eliminating or reducing a Participant's benefit under the Plan as of the effective date of such modification, alteration, amendment or termination.

8.15 Any claim of entitlement to rights or benefits under this Plan shall be resolved in accordance with the claims procedure in the Retirement Plan. The Committee shall have full and final discretion to interpret the provisions of this Plan.

8.16 Any action on matters within the discretion of the Committee shall be conclusive, final, and binding upon all Participants in this Plan and upon all persons claiming any rights under this Plan, including Beneficiaries.

8.17 Whenever any words are used herein in the masculine gender, they will be construed as though they were also used in the feminine gender in all cases where that gender would apply, and vice versa. Whenever any words are used herein in the singular form, they

will be construed as though they were also used in the plural form in all cases where the plural form would apply and vice versa.

8.18 In the event an ambiguity arises between the terms of this Plan as set forth herein and any communication, statement, or inference of any kind, whether or not in writing, made by any person, the terms of this Plan shall control.

8.19 The Committee may delegate any of its duties it deems appropriate or necessary to insure the proper operation and administration of this Plan. Any delegation of duties shall be in writing and delivered to the individuals or organizations responsible to carry out the duties so delegated. Notwithstanding the foregoing, the Committee may not delegate any of its duties related to (i) any claim of entitlement to rights or benefits under this Plan, and (ii) eligibility for participation in this Plan. TO RECORD the adoption of this Plan, effective January 1, 1992, the Company has caused this instrument to be executed on this 3rd day of December, 1991.

ATTEST:

WESTMORELAND COAL COMPANY

(CORPORATE SEAL)

By
President & Chief Executive Officer