

**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)
	)	

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS’ STATEMENT  
REGARDING THE OMNIBUS LIMITED OBJECTION BY THE  
WMLP LENDERS TO FINAL FEE APPLICATIONS AGAINST WLB DEBTORS**

Morrison & Foerster LLP and Cole Schotz P.C., counsel for the Official Committee of Unsecured Creditors (the “**Committee**”) respectfully represent 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”):<sup>2</sup>

**Statement**

1. By the Objection, the MLP Lenders purport to reserve indefinitely the right to reallocate fees and expenses incurred by Professionals as far back as the Petition Date. According to the MLP Lenders, because “many of the Professionals are still performing services for the WMLP Debtors” and therefore have not sought “final” approval of fees and expenses incurred in connection therewith, it is currently “impossible” and “impractical” to assess whether

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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.

<sup>2</sup> 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”), as applicable.

such fees and expenses were correctly allocated. Objection, ¶ 4. Although the Committee and its Professionals appreciate that the staggered nature and divergent timelines of these chapter 11 cases have complicated the process of allocating fees and expenses to the appropriate estate, the relief sought by the MLP Lenders is unwarranted, and the Objection should be overruled.

2. As set forth in the *WLB Debtors' Statement Regarding the Omnibus Limited Objection by the WMLP Lenders to Final Fee Applications Against WLB Debtors* [Dkt. No. 1915], no party (including the MLP Lenders) has objected to the allocation or allowance of specific fees and expenses in any Professional Fee Applications, despite having ample time to do so. Indeed, for many of the Professionals, the monthly fee statements associated with the Professional Fee Applications have been on file for over six months. The time to object to fees and expenses incurred through Plan confirmation has long since passed, and there is no basis to allow the MLP Lenders to reserve rights that have already been waived.

3. Further, the Committee respectfully submits that the Objection proposes a solution in search of a problem. The WLB Debtors emerged from bankruptcy over two months ago. Any fees and expenses incurred by Professionals since that time<sup>3</sup> will therefore be *by definition* allocable to the WMLP Debtors. Accordingly, and despite the MLP Lenders' protestation to the contrary, it is both "possible" and eminently "practical" for the MLP Lenders to determine whether they agree with Professionals' allocations of fees between estates at this time.

4. In any event, the language proposed by the MLP Lenders in the Objection would improperly shift the risk of non-payment onto Professionals that have made a good faith effort to comply with the terms of the Interim Compensation Procedures Order and the Intercompany

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<sup>3</sup> With the exception of fees incurred in connection with preparing fee applications.

Settlement Order. Once fees and expenses have been approved with respect to the WLB Debtors on a final basis, Professionals will have no practical ability to seek further payment from either the WLB Debtors or the WLB Purchaser. As a result, in the event that the MLP Lenders later disagree with a Professional's proposed allocation, that Professional would face a serious risk of non-payment. Such a result would not only be highly prejudicial to Professionals, but would be directly contrary to the Interim Compensation Procedures Order, which has always contemplated an intercompany transfer as the proper remedy in the event of misallocation. *See* Interim Compensation Procedures Order, ¶ 2(b).

5. Thus, to the extent that the Court feels that the inclusion of a reservation of rights is warranted, the Committee requests that any language makes clear that in the event the MLP Lenders later object to a Professional's allocation of fees and expenses, their sole remedy shall be to seek reimbursement from the WLB Debtors or the WLB Purchaser. Further, no objection to fees and expenses that is solely on the basis of allocation should relieve the WMLP Debtors from the obligation to pay allowed fees and expenses that have been allocated to the WMLP Debtors' estates (as will be required by Bankruptcy Code section 1129(a)(9) to confirm a plan).

#### **Reservation of Rights**

6. Nothing herein shall be considered a waiver of any rights, claims, or defenses of any party (including the Committee) 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**

7. For all the foregoing reasons, the Committee respectfully requests that the Court deny the relief requested in the Objection, and grant such other relief as is deemed just and proper.

Dated: June 3, 2019

*/s/ Michael D. Warner*

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