



ENTERED  
06/05/2019

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

In re:

Westmoreland Coal Company, et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

**STIPULATION AND AGREED ORDER REGARDING  
CERTAIN PRIVILEGED DOCUMENTS OF THE WMLP DEBTORS**

This stipulation and agreed order (the "Order") is entered into by and among Westmoreland Resource Partners, LP and its direct and indirect subsidiaries (the "WMLP Debtors") and Westmoreland Mining Holdings LLC and its direct and indirect subsidiaries (the "WLB Purchaser").

**RECITALS**

A. On October 9, 2018, Westmoreland Coal Company ("WLB") and certain of its subsidiaries including the WMLP Debtors (collectively, the "Debtors")<sup>2</sup> filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

B. On and before March 15, 2019, the WLB Debtors, through WMGP, provided various services to the WMLP Debtors, including legal, information technology, and file maintenance services. As a result, the WLB Debtors maintained various electronic

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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> The "WLB Debtors" are WLB and its debtor subsidiaries other than the WMLP Debtors and debtor Westmoreland Resources GP, LLC ("WMGP").

documents belonging to the WMLP Debtors on the WLB Debtors' email and computer servers (the "Servers") and various hard copy documents belonging to the WMLP Debtors in a variety of receptacles that were owned by the WLB Debtors (the "Receptacles").

C. On March 2, 2019, the Court confirmed the chapter 11 plan (the "WLB Plan") of the WLB Debtors. *See Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (Docket No. 1561). Under the WLB Plan, the WLB Debtors sold substantially all of their assets to the WLB Purchaser. That sale closed on March 15, 2019. *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).

D. In connection with that closing, the WLB Debtors transferred, among others things, the Servers and Receptacles to the WLB Purchaser. While the Servers and Receptacles contain information that is protected from disclosure by the attorney-client privilege, the work product doctrine or other applicable privileges belonging to the Conflicts Committee of the WMGP and the WMLP Debtors (the "WMLP Privileged Information"), the WMLP Privileged Information was not among the assets sold to the WLB Purchaser and it was not the intent of the WLB Debtors to transfer the WMLP Privileged Information to the WLB Purchaser.

E. On March 27, 2019, the WMLP Debtors sent a letter to the WLB Purchaser requesting the WLB Purchaser (a) not to access the WMLP Privileged Information and (b) return the WMLP Privileged Information to the WMLP Debtors. Since that time, the WMLP Debtors and the WLB Purchaser have been working diligently and collaboratively to address these requests.

F. The WLB Purchaser currently has in place certain litigation holds (the "Litigation Holds") that cover information and documents maintained on the Servers and in the Receptacles.

**NOW, THEREFORE**, it is hereby ordered, agreed and stipulated as follows:

1. Pursuant to Federal Rule of Evidence 502(d), applicable here under Federal Rule of Bankruptcy Procedure 9017, the disclosure of the WMLP Privileged Information to the WLB Purchaser is not a waiver of any applicable privilege or protection.

2. The WLB Purchaser shall promptly transfer a copy of the Outlook Data Files (.pst files) of Gerry Tywoniuk, Kurt Kost, Keith Horton and Charles Ungurean maintained on the Servers (the "WMGP Board Email Files") to two separate external hard drives (the "WMGP Board Hard Drives") and send the WMGP Board Hard Drives to the WMLP Debtors c/o Matthew Corcoran, Jones Day, 325 John H. McConnell Boulevard, Suite 600, Columbus, Ohio 43215. Upon receipt of the WMGP Board Hard Drives, Mr. Corcoran will promptly notify Tobias Jacoby of Kramer Levin by email (tjacoby@kramerlevin.com) that he received the WMGP Board Hard Drives. Within five (5) business days of Mr. Jacoby receiving notice from Mr. Corcoran in accordance with the preceding sentence, the WLB Purchaser shall destroy all copies of the WMGP Board Email Files in its possession; provided, however, the foregoing obligation to destroy the WMGP Board Email Files will not apply to any copies that exist on any data backups of the Servers ("WMGP Board Backup Copies"). The WMLP Debtors will retain the WMGP Board Hard Drives until the WLB Purchaser releases the Litigation Holds. When the WLB Purchaser releases the Litigation Holds, it will promptly notify the WMLP Debtors that the Litigation Holds have been released by sending an email to Mr. Corcoran (mccorcoran@jonesday.com).

3. The WLB Purchaser shall promptly transfer a copy of the Outlook Data Files (.pst files) from July 1, 2017 through March 15, 2019 for Adam Bricker, Joseph Evers, Cole Ferrin, Phyllis LaChance, Albert Siemer and Richard Smith maintained on the Servers (the "Group A Former Employee Email Files") to two separate external hard drives (the "Group A Former Employee Hard Drives") and send the Group A Former Employee Hard Drives to Christopher Koenig, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654. Upon receipt of the Group A Former Employee Hard Drives, Mr. Koenig will promptly notify Tobias Jacoby of Kramer Levin by email (tjacoby@kramerlevin.com) that he received the Group A Former Employee Hard Drives. Within five (5) business days of Mr. Jacoby receiving notice from Mr. Koenig in accordance with the preceding sentence, the WLB Purchaser shall destroy all copies of the Group A Former Employee Email Files in its possession as soon as reasonably practicable; provided, however, the foregoing obligation to destroy the Group A Former Employee Email Files will not apply to any copies that exist on any data backups of the Servers ("Group A Former Employee Backup Copies"). Kirkland & Ellis LLP will retain the Group A Former Employee Hard Drives until the WLB Purchaser releases the Litigation Holds. When the WLB Purchaser releases the Litigation Holds, it will promptly notify Mr. Koenig that the Litigation Holds have been released by sending an email to Mr. Koenig (chris.koenig@kirkland.com). After Mr. Koenig receives notice from Mr. Jacoby in accordance with the preceding sentence, Kirkland & Ellis LLP will promptly destroy the Group A Former Employee Email Files on the Group A Former Employee Hard Drives. Kirkland & Ellis LLP shall not provide access to any file stored on the Group A Former Employee Hard Drives to the WLB Purchaser, the WMLP Debtors or any other party except to facilitate a review of the Group A Former Employee Email Files in accordance with a review protocol agreed to in accordance with paragraph 6 of the Order.

4. The WLB Purchaser shall not access any WMGP Board Backup Copies or Group A Former Employee Backup Copies. If the WLB Purchaser restores any data backup copies of the Servers (each a "Restore"), it will promptly destroy any WMGP Board Email Files and Group A Former Employee Email Files that are restored in connection with any Restore.

5. The WLB Purchaser shall not intentionally access any WMLP Privileged Information maintained on the Servers or stored in the Receptacles, including, without limitation, any WMLP Privileged Information contained in the Outlook Data Files (.pst files) of the twenty-five custodians previously identified by the WMLP Debtors who currently work for the WLB Purchaser (the "Current Employee Files") and the six custodians previously identified by the WMLP Debtors who do not currently work for the WLB Purchaser and whose Outlook Data Files (.pst files) are not subject to paragraph 3 of the Order (the "Group B Former Employees Email Files"). The Current Employee Files and the Group B Former Employees Email Files are together referred to as the "Active Server Files." If the WLB Purchaser inadvertently accesses any WMLP Privileged Information, the WLB Purchaser shall immediately disregard such information and shall not utilize the WMLP Privileged Information for any purpose.

6. If the WLB Purchaser is served with discovery, a subpoena or order of a court or government body of competent jurisdiction that would compel the disclosure of any WMLP Privileged Information or require the WLB Purchaser to review materials potentially containing WMLP Privileged Information to comply with the discovery, subpoena or order, the WLB Debtors will notify the WMLP Debtors by sending an email to Mr. Corcoran (mccorcoran@jonesday.com), no later than the earlier of (a) five (5) business days after receiving the discovery, subpoena or order or (b) two (2) days before the discovery, subpoena or order requires compliance. To the extent the discovery, subpoena or order would compel

disclosure of any WMLP Privileged Materials contained in the WMGP Board Email Files or require the WLB Purchaser to review the WMGP Board Email Files to comply with the discovery, subpoena or order, the WLB Purchaser shall direct the requesting party to request those documents from the WMLP Debtors. To the extent the discovery, subpoena or order would compel disclosure of any WMLP Privileged Materials contained in the Group A Former Employee Email Files or require the WLB Purchaser to review the Group A Former Employee Email Files to comply with the discovery, subpoena or order, the WLB Purchaser and WMLP Debtors shall coordinate on a review protocol that will allow the WMLP Debtors to cull out WMLP Privileged Materials and assert any applicable privileges or protection from disclosure against the requesting party. To the extent the discovery, subpoena or order would compel disclosure of any WMLP Privileged Materials contained in the Active Server Files or require the WLB Purchaser to review materials potentially containing WMLP Privileged Information in or from the Active Server Files to comply with the discovery, subpoena or order, the WLB Purchaser and WMLP Debtors shall coordinate on a review protocol that will allow the WMLP Debtors to cull out WMLP Privileged Materials and assert any applicable privileges or protection from disclosure against the requesting party.

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

**IT IS SO ORDERED**

**Signed: June 05, 2019**



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**DAVID R. JONES**  
**UNITED STATES BANKRUPTCY JUDGE**

**Stipulated and Agreed:**

/s/ John F. Higgins

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