

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

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In re:	§	
	§	Chapter 11
	§	
WESTMORELAND COAL COMPANY, <i>et al.</i> <sup>1</sup>	§	Case No. 18-36572 (DRJ)
	§	
Debtors.	§	(Jointly Administered)
	§	

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**DEBTORS' TWENTY-FIRST OMNIBUS OBJECTION TO CERTAIN PROOFS OF  
CLAIM (EXACT DUPLICATE CLAIMS, NO LIABILITY CLAIMS, LATE-FILED  
CLAIMS, RECLASSIFIED CLAIMS, MODIFIED CLAIMS, AND NO LIABILITY  
CONTRACT CLAIMS)**

**THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW OR MODIFY THE CLAIM THAT YOU FILED IN THIS BANKRUPTCY CASE. YOU SHOULD IMMEDIATELY CONTACT THE OBJECTING PARTY TO RESOLVE THE DISPUTE. IF YOU DO NOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE TO THIS OBJECTION AND SEND A COPY OF YOUR RESPONSE TO THE OBJECTING PARTY WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE OBJECTION IS NOT VALID. IF YOU DO NOT FILE A RESPONSE WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED OR MODIFIED WITHOUT A HEARING.**

**A HEARING HAS BEEN SET ON THIS MATTER ON JULY 22, 2019, AT 2:00 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.**

**THIS OBJECTION SEEKS TO DISALLOW AND EXPUNGE CERTAIN PROOFS OF CLAIM. CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND CLAIMS ON EXHIBIT A, EXHIBIT B, EXHIBIT C, AND EXHIBIT F TO THE ORDER FILED WITH THIS OBJECTION.**

**THIS OBJECTION ALSO SEEKS TO MODIFY AND ADJUST CERTAIN PROOFS OF CLAIM. CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND CLAIMS ON EXHIBIT D AND EXHIBIT E TO THE ORDER FILED WITH THIS OBJECTION.**

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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 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.

The Reorganized WLB Debtors<sup>2</sup> and the WMLP Debtors<sup>3</sup> (collectively, with the Reorganized WLB Debtors, the “Debtors”) in the above-captioned cases respectfully represent as follows in support of this omnibus claims objection (this “Objection”), and submits the *Declaration of Robert P. Esposito in Support of the Debtors’ Twenty-First Omnibus Objection to Certain Proofs of Claim (Exact Duplicate Claims, No Liability Claims, Late-Filed Claims, Reclassified Claims, Modified Claims, and No Liability Contract Claims)* attached hereto as **Exhibit 1** (the “Esposito Declaration”):

**Relief Requested**

1. By this Objection, the Debtors seek entry of the proposed order (the “Order”), substantially in the form of the Order filed with this Objection, pursuant to § 502(b) of the Bankruptcy Code, Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Objection Procedures (as defined herein):

- (a) disallowing and expunging the claim identified on **Exhibit A** to the Order (the “Duplicate Claim”) in its entirety because such claim is an exact duplicate of the proof of claim identified on **Exhibit A** as the “Remaining Claim” (the “Remaining Duplicate Claim”);
- (b) disallowing and expunging the claims identified on **Exhibit B** to the Order (collectively, the “No Liability Claims”) in their entirety because each such No Liability Claim is not reflected as a current liability in the Debtors’ books and records and the Debtors are not liable for such No Liability Claims;
- (c) disallowing and expunging the claims identified on **Exhibit C** to the Order (collectively, the “Late-Filed Claims”) in their entirety because each such Late-Filed Claim was filed after the Bar Date and is not reflected as a liability in the Debtors’ books and records;
- (d) modifying and reclassifying each claim identified on **Exhibit D** to the Order (collectively, the “Reclassified Claims”) because the Debtors have determined that

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<sup>2</sup> “WLB Debtors” and “Reorganized WLB Debtors” after the effective date, means all Debtors except for Westmoreland Resources GP, LLC, Westmoreland Resource Partners, LP (“WMLP”), and WMLP’s subsidiaries (collectively with WMLP, the “WMLP Debtors”).

<sup>3</sup> Specifically, the WMLP Debtors are: (a) WMLP; (b) Westmoreland Kemmerer, LLC; (c) Oxford Mining Company, LLC; (d) Harrison Resources, LLC; (e) Oxford Mining Company-Kentucky, LLC; (f) Daron Coal Company, LLC; (g) Oxford Conesville, LLC; and (h) Westmoreland Kemmerer Fee Coal Holdings, LLC.

each such Reclassified Claim was filed under an incorrect classification based on the Debtors' books and records;

- (e) modifying and adjusting each claim identified on **Exhibit E** to the Order (collectively, the "**Modified Claims**") because the Debtors have determined that each such Modified Claim should be modified and adjusted to reflect the true liability of the Debtors to the claimant;
- (f) disallowing and expunging the claims identified on **Exhibit F** to the Order (collectively, the "**No Liability Contract Claims**") in their entirety because each such No Liability Contract Claim is not reflected as a current liability in the Debtors' books and records and the Debtors are not liable for such No Liability Contract Claims.

2. In support of this Objection to these certain objected to proofs of claim (each, an "**Objected Claim**," and collectively, the "**Objected Claims**"), the Debtors submit the Esposito Declaration.

### **Jurisdiction, Venue, and Procedural Background**

3. The United States Bankruptcy Court for the Southern District of Texas (the "**Court**") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The Debtors confirm their consent, pursuant to rule 7008 of the Bankruptcy Rules, to the entry of a final order by the Court in connection with this Objection to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are §§ 105(a) and 502(b) of title 11 of the United States Code (the "**Bankruptcy Code**"), Bankruptcy Rule 3007, and Rules 9013-1 and 3007-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "**Bankruptcy Local Rules**").

6. On October 9, 2018 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy

Court for the Southern District of Texas (the “Bankruptcy Court”). These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [ECF No. 71].

7. 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 (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to § 1102 of the Bankruptcy Code (the “Committee”) [ECF No. 206].

8. The WMLP Debtors are operating their businesses and managing their properties as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

9. On March 2, 2019, the Bankruptcy Court entered the *Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (the “Confirmation Order”) [ECF No. 1561] confirming WLB Debtors’ plan of reorganization (the “WLB Plan”).

10. On March 15, 2019, the effective date of the WLB Plan occurred (the “Effective Date”) [ECF No. 1608].

11. On June 5, 2019, the Bankruptcy Court entered the *Order Approving Disclosure Statement and Confirming Amended Joint Plan of Liquidation for the WMLP Debtors, As Modified* (the “WMLP Confirmation Order”) [ECF No. 1967], confirming the WMLP Debtors’ plan of liquidation (the “WMLP Plan”).

### **The Claims Reconciliation Process**

12. On November 9, 2018, the Debtors filed their Statements of Financial Affairs and Schedules of Assets and Liabilities, as required by § 521 of the Bankruptcy Code (collectively, the “Schedules”) pursuant to Bankruptcy Rule 1007 and the *Order Extending Time to File Schedules*

*of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs* [ECF No. 82].

13. On November 15, 2018, the Court entered the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(B)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(B)(9) Requests, and (IV) Approving Notice of Bar Dates* [ECF No. 524] (the “Bar Date Order”), establishing certain dates and deadlines for filing proofs of claims in these chapter 11 cases (collectively, the “Proofs of Claims”). Among other things, the Bar Date Order established: (a) December 12, 2018 at 5:00 p.m. prevailing Central Time, as the deadline for all non-governmental entities holding or wishing to assert a “claim” (as defined in § 101(5) of the Bankruptcy Code) against any of the Debtors that arose before the Petition Date to file a proof of such claim in writing and (b) April 8, 2019, at 5:00 p.m. prevailing Central Time, as the deadline for all governmental entities holding or wishing to assert a “claim” (as defined in § 101(5) of the Bankruptcy Code) against any of the Debtors that arose before the Petition Date to file a proof of such claim in writing.

14. To date, over 1,369 proofs of claims have been filed against the Debtors, totaling over \$2.772 billion in the aggregate for liquidated amounts. Because of the large number of claims in these cases, the Debtors sought and have been granted approval to file omnibus objections to certain claims in accordance with the procedures set forth in the *Order Approving Omnibus Claims Objection Procedures and Filing of Substantive Omnibus Claims Objections* [ECF No. 1546] (the “Objection Procedures”). The Debtors and their advisors (collectively, the “Reviewing Parties”), have been working diligently to review the Objected Claims, including any supporting documentation filed therewith. For the reasons set forth below, and based on the

review to date, the Reviewing Parties have determined that the Duplicate Claims, No Liability Claims, Late-Filed Claims, and No Liability Contract Claims should be disallowed and expunged, and the Reclassified Claims and Modified Claims should be modified and adjusted as set forth herein.

### **Objection**

15. Section 502 of the Bankruptcy Code provides, in pertinent part, as follows: “[a] claim or interest, proof of which is filed under § 501 of [the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502. Section 502(b)(1) provides that a court shall not allow a claim if “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.” *See* 11 U.S.C. § 502(b)(1). Moreover, Bankruptcy Rule 3007 provides certain grounds upon which “objections to more than one claim may be joined in an omnibus objection,” which includes when “the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because . . . they duplicate other claims,” “they were not timely filed,” “they have been filed in the wrong case,” or “they have been satisfied or released during the case in accordance with the [Bankruptcy] Code, applicable rules, or a court order.” Fed. R. Bankr. P. 3007(d). Additionally, pursuant to the Objection Procedures, the Debtors are permitted to file objections to more than one claim on the basis that, among other things, such claims were incorrectly classified. *See* Objection Procedures, Ex. 1, ¶ 1(d).

16. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes prima facie evidence of the validity and the amount of the claim under § 502(a) of the Bankruptcy Code. *See, e.g., In re Tran*, 351 B.R. 440, 444 (Bankr. S.D. Tex. 2006), *aff'd*, 369 B.R. 312 (S.D. Tex. 2007) (holding that a properly filed proof of claim is prima facie evidence of the validity and amount of the claim.) A proof of claim loses the presumption of prima facie

validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim's legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988) (holding "If, however, evidence rebutting the claim is brought forth, then the claimant must produce additional evidence to "prove the validity of the claim by a preponderance of the evidence.") Once such an allegation is refuted, the burden reverts to the claimant to prove the validity of its claim by a preponderance of the evidence. *Id.* Despite this shifting burden during the claim objection process, "the ultimate burden of proof always lies with the claimant." *Id.*

**A. Duplicate Claims**

17. As set forth in the Esposito Declaration, the Debtors have reviewed their books and records and the claims register and have determined that the Duplicate Claims identified on **Exhibit A** to the Order are exact duplicates of the Remaining Claims identified on **Exhibit A** to the Order. Failure to disallow and expunge the Duplicate Claims could potentially result in the applicable claimants receiving double recoveries against the Debtors to the detriment of other similarly situated creditors. Accordingly, the Debtors respectfully request that the Bankruptcy Court enter the Order disallowing and expunging the Duplicate Claims identified on **Exhibit A** to the Order. This Objection does not affect the Remaining Claims identified on **Exhibit A** to the Order, and the Debtors reserve their right to object to the Remaining Claims on any grounds whatsoever.

**B. No Liability Claims**

18. As set forth in the Esposito Declaration, the Debtors and the Reviewing Parties have thoroughly reviewed their books and records and the claims register and are unable to identify any amounts due and owing on account of the No Liability Claims identified on **Exhibit B** to the Order as further elaborated on **Exhibit B**, and the Debtors do not owe the amounts claimed therein.

Failure to disallow and expunge such No Liability Claims could result in the relevant claimants receiving an unwarranted recovery against the Debtors to the detriment of other similarly situated creditors. Elimination of these No Liability Claims will enable the Reorganized Debtors to maintain a more accurate claims register and will not prejudice the claimants. Accordingly, the Debtors request that the Court enter the Order disallowing and expunging the No Liability Claims identified on **Exhibit B** to the Order.

**C. Late-Filed Claims**

19. As set forth in the Esposito Declaration, the Debtors and the Reviewing Parties have thoroughly reviewed the Debtors' books and records and the claims register and have determined that the Late-Filed Claims identified on **Exhibit C** to the Order were filed after the Bar Date. The Bar Date Order provides that any claim filed after the Bar Date is disallowed. In this regard, the Bar Date Order sets forth:

Any entity who is required (and not exempt) under this Bar Date Order, but fails, to file a Proof of Claim in accordance with this Bar Date Order on or before the applicable Bar Date *shall be forever barred, estopped, and enjoined from asserting such claim against the Debtors in these chapter 11 cases* (or filing a Proof of Claim with respect thereto).

Bar Date Order ¶ 23 (emphasis added).

20. Further, the confirmed WLB Plan also expunges Late-Filed claims:

Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which *no Proof of Claim is or has been timely Filed*, or that is not or has not been Allowed by a Final Order, is *not considered Allowed and shall be expunged without further action by the WLB Debtors* and without further notice to any party or action, approval, or order of the Bankruptcy Court.

WLB Plan, Art. VIII.A.1 (emphasis added).

21. The Debtors have determined that the Late-Filed Claims were filed after the Bar Date and, under the terms of the Bar Date Order are barred, and under the WLB Plan, are

automatically disallowed and expunged. Therefore, the Debtors have no liability related to the Late-Filed Claims. Failure to disallow and expunge such Late-Filed Claims could result in the relevant claimants receiving an unwarranted recovery against the Debtors to the detriment of other similarly situated creditors. Elimination of these Late-Filed Claims will enable the Reorganized Debtors to maintain a more accurate claims register and will not prejudice the claimants. Accordingly, the Debtors request that the Court enter the Order disallowing and expunging the Late-Filed Claims identified on Exhibit C to the Order.

**D. Reclassified Claims**

22. As set forth in the Esposito Declaration, the Debtors and the Reviewing Parties have reviewed the Debtors' books and records and the claims register and have determined that the Reclassified Claims identified on Exhibit D to the Order, as filed, do not accurately reflect the correct classification for each Proof of Claim according to the Debtors' books and records. Instead, the Debtors believe that the asserted classification of such claims as identified in the column titled "Asserted" should be modified to the classification identified in the column titled "Modified" in the table provided in Exhibit D to the Order (collectively, the "Corrected Claims"). Based on the Debtors' books and records, the Debtors believe that each such Reclassified Claim must be modified, in whole or in part, from a secured claim, priority claim, administrative claim, or § 503(b)(9) claim to a general unsecured claim as further specified on Exhibit D to the Order. The Debtors assert that the classification listed in the "Modified" column for each Reclassified Claim represents the appropriate classification for each respective Proof of Claim, as reflected in the Debtors' books and records and/or from the information provided by the claimants. Failure to modify and reclassify the Reclassified Claims could potentially result in the applicable claimants receiving (a) a better recovery than other similarly situated creditors, even though such recovery is not warranted, or (b) a lesser recovery than they are otherwise entitled. Accordingly, the Debtors

respectfully request that the Bankruptcy Court enter the Order modifying and reclassifying the Reclassified Claims identified on **Exhibit D** to the Order.

**E. Modified Claims**

23. As set forth in the Esposito Declaration, the Reviewing Parties have thoroughly reviewed the Debtors' books and records along with the Modified Claims and any documents filed in support therewith, and have determined that the Modified Claims have either (i) been paid in part during or prior to these chapter 11 cases in accordance with the Bankruptcy Code, any applicable rules, or a Court order; or (ii) the claim includes post-petition invoices that were satisfied in the ordinary course of business. As such, the Debtors request that the Court modify and reduce each Modified Claim to the amounts listed in the "Modified" column on **Exhibit E** to the Order. Failure to modify and reduce such Modified Claims could result in the relevant claimants receiving an unwarranted recovery against the Debtors to the detriment of other similarly situated creditors. Accordingly, the Debtors respectfully request that the Bankruptcy Court enter the Order modifying and reducing the Modified Claims identified on **Exhibit E** to the Order.

**F. No Liability Contract Claims**

24. Each of the No Liability Contract Claims listed on **Exhibit F** to the Order were filed on account of certain obligations arising from contracts between the claimant filing the No Liability Contract Claim and the Debtors. As set forth in the Esposito Declaration, the Debtors and the Reviewing Parties have thoroughly reviewed their books and records and the claims register and are unable to identify any amounts due and owing on account of the No Liability Contract Claims identified on **Exhibit F** to the Order as further elaborated on **Exhibit F**, and the Debtors do not owe the amounts claimed therein. Under the WLB Plan, the respective contracts

forming the basis of certain of the No Liability Contract Claims<sup>4</sup> were assumed by the Reorganized Debtors.<sup>5</sup> Pursuant to the Reorganized Debtors' books and records, all amounts due and owing to each claimant on or before the Effective Date have been paid, released, or otherwise satisfied in full. In this regard, the WLB Plan sets forth:

Assumption (or assumption and assignment) of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the **full release and satisfaction of any Claims or defaults**, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed (or assumed and assigned) Executory Contract or Unexpired Lease at any time before the date that the WLB Debtors assume such Executory Contract or Unexpired Lease.

WLB Plan, Art. V.C (p. 47-48) (emphasis added).

25. Further, the WLB Plan provides that “any Proof of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed **shall be deemed disallowed and expunged**, without further notice to or action, order, or approval of the Bankruptcy Court.” *Id.* (emphasis added).

26. Certain of the No Liability Contract Claims filed by Komatsu Financial Limited Partnership<sup>6</sup> listed on **Exhibit F** to the Order were assumed and assigned to CCU Coal and Construction, LLC, through the *Order Approving Joint Expedited Motion of the WLB Debtors and the WMLP Debtors for Entry of an Order (I) Approving the Sale of (A) Substantially All of the Assets of Oxford Mining Company, LLC, and Certain of its Subsidiaries and (B) the Buckingham Mine (II) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith and (III) Granting Related Relief, Including Approval of the Related Sale*

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<sup>4</sup> These No Liability Contract Claims include DRC Claim Nos. 241, 276, 280, 965, 904, 1231, 906, and 98.

<sup>5</sup> See *Notice of Fifth Amendment to the Plan Supplement* [ECF No. 1605].

<sup>6</sup> These No Liability Contract Claims include DRC Claim Nos. 728 and 729.

*Process* [ECF No. 1289] and the *Notice of Occurrence of Closing of Sales of the Buckingham Mine and the Oxford Assets* [ECF No. 1351]. As such, the Debtors are not liable for the No Liability Contract Claims. Failure to disallow and expunge such No Liability Contract Claims could result in the relevant claimants receiving an unwarranted recovery against the Debtors to the detriment of other similarly situated creditors. Elimination of these No Liability Contract Claims will enable the Reorganized Debtors to maintain a more accurate claims register and will not prejudice the claimants. Accordingly, the Debtors request that the Court enter the Order disallowing and expunging the No Liability Contract Claims identified on **Exhibit F** to the Order.

### **Reservation of Rights**

27. This Objection is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of the Debtors to object to any claim on any ground whatsoever. The Debtors expressly reserve all further substantive or procedural objections. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to § 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

### **Separate Contested Matter**

28. To the extent that a response is filed regarding any Objected Claim and the Debtor is unable to resolve any such response, each such Objected Claim, and the Objection as it pertains to such Objected Claim, will constitute a separate contested matter as contemplated by Bankruptcy

Rule 9014. Further, the Debtors requests that any order entered by the Court regarding an objection or other reply asserted in response to this Objection be deemed a separate order with respect to each proof of claim.

**Notice**

29. Notice of the hearing on the relief requested in this Objection has been provided by the Debtors in accordance and compliance with Bankruptcy Rules 4001 and 9014, as well as the Bankruptcy Local Rules, and is sufficient under the circumstances. Without limiting the forgoing, due notice was afforded, whether by facsimile, electronic mail, overnight courier or hand delivery, to parties in interest, including (collectively, the “Notice Parties”): (a) the Office of the United States Trustee for the Southern District of Texas; (b) the Committee; (c) the indenture trustee under the WLB Debtors’ 8.75% senior secured notes due 2022; (d) the ad hoc group of lenders under the WLB Debtors’ prepetition term loan facility due 2020 and the WLB Debtors’ 8.75% senior secured notes due 2022; (e) the administrative agent under the WLB Debtors’ prepetition term loan facility due 2020; (f) the administrative agent under the WMLP Debtors’ term loan facility due 2018; (g) the ad hoc committee of certain lenders under the WMLP Debtors’ term loan facility due 2018; (h) the administrative agent under the WLB Debtors’ debtor-in-possession financing facility; (i) the lenders under the WLB Debtors’ debtor-in-possession financing facility; (j) counsel to the Conflicts Committee of the Board of Directors of Westmoreland Resources GP, LLC; (k) the United States Attorney’s Office for the Southern District of Texas; (l) the Internal Revenue Service; (m) the United States Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (n) the offices of the attorneys general for the states in which the Debtors operate; (o) the United States Securities and Exchange Commission; (p) the Pension Benefit

Guaranty Corporation; (q) holders of the Objected Claims; and (r) any party that has requested notice pursuant to Bankruptcy Rule 2002.

WHEREFORE, the Debtors respectfully request that the Court enter an Order granting the relief requested herein, and such other and further relief as is just and equitable.

Houston, Texas  
June 7, 2019

*/s/ Matthew D. Cavanaugh*

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Matthew D. Cavanaugh (Bar No. 24062656)

Jennifer F. Wertz (Bar No. 24072822)

Vienna F. Anaya (Bar No. 24091225)

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*Co-Counsel to the Debtors*

**Certificate of Service**

I certify that on the 7th day of June 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*

\_\_\_\_\_  
Matthew D. Cavanaugh

**Exhibit 1**

**Esposito Declaration**

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

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In re:	§
	§ Chapter 11
	§
WESTMORELAND COAL COMPANY, <i>et al.</i> <sup>1</sup>	§ Case No. 18-36572 (DRJ)
	§
Debtors.	§ (Jointly Administered)
	§

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**DECLARATION OF ROBERT P. ESPOSITO  
IN SUPPORT OF DEBTORS' TWENTY-FIRST OMNIBUS  
OBJECTION TO CERTAIN PROOFS OF CLAIM (EXACT DUPLICATE CLAIMS, NO  
LIABILITY CLAIMS, LATE-FILED CLAIMS, RECLASSIFIED CLAIMS, MODIFIED  
CLAIMS, AND NO LIABILITY CONTRACT CLAIMS)**

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I, **ROBERT P. ESPOSITO**, hereby declare under penalty of perjury:

1. I am a Director of Alvarez & Marsal North America, LLC ("A&M"). A&M was retained by the above-captioned Reorganized WLB Debtors<sup>2</sup> and the WMLP Debtors<sup>3</sup> (collectively, with the Reorganized WLB Debtors, the "Debtors") as restructuring advisor in connection with these chapter 11 cases. I have more than ten (10) years of restructuring experience.

2. I am generally familiar with the Debtors' day-to-day operations, financing arrangements, business affairs, and books and records that reflect, among other things, the Debtors'

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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 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> "WLB Debtors" and "Reorganized WLB Debtors" after the effective date, means all Debtors except for Westmoreland Resources GP, LLC, Westmoreland Resource Partners, LP ("WMLP"), and WMLP's subsidiaries (collectively with WMLP, the "WMLP Debtors").

<sup>3</sup> Specifically, the WMLP Debtors are: (a) WMLP; (b) Westmoreland Kemmerer, LLC; (c) Oxford Mining Company, LLC; (d) Harrison Resources, LLC; (e) Oxford Mining Company-Kentucky, LLC; (f) Daron Coal Company, LLC; (g) Oxford Conesville, LLC; and (h) Westmoreland Kemmerer Fee Coal Holdings, LLC.

liabilities and the amount thereof owed to their creditors as of the Petition Date. I have read the *Debtors' Twenty-First Omnibus Objection to Certain Proofs of Claim (Exact Duplicate Claims, No Liability Claims, Late-Filed Claims, Reclassified Claims, Modified Claims, and No Liability Contract Claims)* (the "Objection"), filed contemporaneously herewith.<sup>4</sup>

3. To the best of my knowledge, information, and belief, the assertions made in the Objection are accurate. In evaluating the Objected Claims, the Debtors and the Reviewing Parties have reviewed the Debtors' books and records and the relevant proofs of claim, as well as the supporting documentation provided by each claimant, and have determined that each Duplicate Claim, No Liability Claim, Late-Filed Claim, and No Liability Contract Claim should be disallowed and expunged, and each Reclassified Claim and Modified Claim should be modified and adjusted. As such, I believe that the disallowance and expungement of the Duplicate Claim, No Liability Claim, Late-Filed Claim, and No Liability Contract Claim, and the modification of the Reclassified Claim and Modified Claim on the terms set forth in the Objection is appropriate.

#### **Duplicate Claims**

4. The Debtors have determined that each Duplicate Claim identified on **Exhibit A** of the Order under "Claim(s) To Be Disallowed" is duplicative of other proofs of claim filed by or on behalf of the same claimant in respect of the same liabilities. Failure to disallow and expunge the Duplicate Claims could potentially result in the relevant claimant receiving an unwarranted recovery against the Debtors to the detriment of other creditors. As such, I believe that disallowance and expungement of the Duplicate Claims on the terms set forth in the Objection and **Exhibit A** is appropriate.

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<sup>4</sup> Capitalized but undefined terms herein shall have the same meaning ascribed to them in the Objection.

**No Liability Claims**

5. To the best of my knowledge, information, and belief, the Reviewing Parties have thoroughly reviewed the Debtors' books and records and the claims register and have been unable to identify any amounts due and owing on account of the No Liability Claims listed on **Exhibit B** to the Order because for the reasons set forth on **Exhibit B** in the column titled "Reason for Disallowance." Following the Reviewing Parties' investigation into the No Liability Claims, the Reviewing Parties have determined that the Debtors are not liable for the amounts claimed in the No Liability Claims. Failure to disallow and expunge the No Liability Claims could potentially result in the relevant claimant receiving an unwarranted recovery against the Debtors to the detriment of other creditors. As such, I believe that disallowance and expungement of the No Liability Claims on the terms set forth in the Objection and **Exhibit B** is appropriate.

**Late-Filed Claims**

6. To the best of my knowledge, information, and belief, the Reviewing Parties have thoroughly reviewed the Debtors' books and records and the claims register and have determined that each Late-Filed Claims listed on **Exhibit C** to the Order was filed after the Bar Date. Failure to disallow and expunge the Late-Filed Claims could potentially result in the relevant claimant receiving an unwarranted recovery against the Debtors to the detriment of other creditors. As such, I believe that disallowance and expungement of the Late-Filed Claims on the terms set forth in the Objection and **Exhibit C** is appropriate.

**Reclassified Claims**

7. To the best of my knowledge, information, and belief, the Reviewing Parties determined that each Reclassified Claim listed on **Exhibit D** to the Order does not accurately reflect the correct classification for each Proof of Claim according to the Debtors' books and records. I understand that failure to reclassify the Reclassified Claim would result in the applicable

claimants receiving recoveries they are not entitled to against the Debtors to the detriment of other similarly situated creditors. As such, I believe that the modification and reclassification of each Reclassified Claim on the terms set forth in the Objection and **Exhibit D** is appropriate.

#### **Modified Claims**

8. To the best of my knowledge, information, and belief, in evaluating each Modified Claim, the Reviewing Parties have thoroughly revised the Debtors' books and records along with each Modified Claim and any documents filed in support therewith, and have determined that each Modified Claim has been paid in part during or before these chapter 11 cases. Specifically, the Modified Claims listed on **Exhibit E** to the Order were either (i) been paid in part during or prior to these chapter 11 cases in accordance with the Bankruptcy Code, any applicable rules, or a Court order, or (ii) the claim includes post-petition invoices that were satisfied in the ordinary course of business. Failure to disallow and expunge the Modified Claims would result in the applicable claimants receiving an unwarranted recovery against the Debtors to the detriment of other similarly situated creditors. As such, I believe that modification and adjustment of the Modified Claims on the terms set forth in the Objection and **Exhibit E** is appropriate.

#### **No Liability Contract Claims**

9. The Debtors have thoroughly reviewed their books and records and the claims register and have been unable to identify any amounts due and owing on account of the No Liability Contract Claims listed on **Exhibit F** to the proposed Order. I understand that the contracts forming the bases of the No Liability Contract Claims have been "assumed" by the Debtors and that all amounts due and owing to each claimant on or before the Effective Date have been paid, released, or otherwise satisfied in full. Following the Reviewing Parties' investigation into the No Liability Contract Claims, the Reviewing Parties have determined that the Debtors are not liable for the amounts claimed in the No Liability Claims. The Debtors are not liable for satisfaction of

each No Liability Contract Claim. If the No Liability Contract Claims are not disallowed and expunged in their entirety, the applicable claimant could receive an unwarranted recovery to the detriment of other creditors. As such, I believe the expungement and disallowance of the No Liability Contract Claims identified on **Exhibit F** on the terms set forth in the Objection is appropriate.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information and belief.

Dated: June 7, 2019

*/s/ Robert P. Esposito*

Robert P. Esposito

Alvarez & Marsal North America, LLC