



ENTERED
09/05/2019

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

In re:	§	
	§	Chapter 11
	§	
WESTMORELAND COAL COMPANY, <i>et al.</i> ¹	§	Case No. 18-35672 (DRJ)
	§	
Debtors.	§	(Jointly Administered)
	§	Re: ECF No. 1791 & 2302

STIPULATION AND AGREED ORDER RESOLVING REMAINING CLAIMS OF W.W. GRAINGER, INC. AND DEBTORS’ EIGHTH OMNIBUS OBJECTION TO A CERTAIN PROOF OF CLAIM FILED BY W.W. GRAINGER, INC.

The WMLP Debtors² and, after the WMLP Effective Date, the WMLP Liquidation Trust, and the WLB Debtors³ (collectively, with the WMLP Debtors or WMLP Liquidation Trust, the “Debtors”) in the above-captioned cases and W.W. Grainger, Inc. (“Creditor,” and together with the Debtors, the “Parties”) hereby enter into this stipulation and order (this “Stipulation and Agreed Order”) as follows:

WHEREAS, 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

¹ 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. Westmoreland Coal Company’s service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

² 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.

³ “WLB Debtors” means all Debtors except for Westmoreland Resources GP, LLC, Westmoreland Resource Partners, LP (“WMLP”), and WMLP’s subsidiaries (collectively with WMLP, the “WMLP Debtors”).

cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [ECF No. 71];

WHEREAS, 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];

WHEREAS, the Bankruptcy 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), and venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409;

WHEREAS, 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 (the “WLB Plan”);

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

WHEREAS, 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”);

WHEREAS, on June 21, 2019, the effective date of the WMLP Plan occurred (the “WMLP Effective Date”) [ECF No. 2068];

WHEREAS, Creditor filed Claim No. 22-1 (DRC Claim No. 397) against Debtor Western Energy Company (Case No. 18-35688) (such claim, the “Western Energy Claim”);

WHEREAS, the Debtors filed the *Debtors' Eighth Omnibus Objection to Certain Proofs of Claim (No Liability Claims)* [ECF No. 1791] (the "Objection") whereby the Debtors objected to the Western Energy Claim on the basis that the Debtors were not liable for the amount asserted in the Western Energy Claim;

WHEREAS, Creditor additionally filed the following claims: (i) Claim No. 153-1 (DRC Claim No. 344) against Debtor San Juan Coal Company⁴ (Case No. 18-35684) (the "San Juan Claim"); (ii) Claim No. 24-1 (DRC Claim No. 379) against Debtor Buckingham Coal Company, LLC (Case No. 18-35675) (the "Buckingham Claim"); (iii) Claim No. 27-1 (DRC Claim No. 406) against Debtor Westmoreland Kemmerer, LLC (Case No. 18-35696) (the "Kemmerer Claim"); and Claim No. 30-1 (DRC Claim No. 418) against Debtor Westmoreland Resources, Inc. (Case No. 18-35704) (the "Resources Claim," and together with the San Juan Claim, Buckingham Claim, and Kemmerer Claim, the "Remaining Claims"); and

WHEREAS, the Debtors and Creditor have agreed to resolve the Objection and the Remaining Claims, as provided herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Stipulation and Agreed Order, the Parties hereby stipulate and agree as follows:

1. The Debtors hereby withdraw the Objection solely with respect to the Western Energy Claim.
2. The Western Energy Claim is hereby allowed as a § 503(b)(9) claim in the amount of \$225.06 against Debtor Western Energy Company (Case No. 18-35688).

⁴ Through the *Order Granting the Debtors' Fourth Omnibus Objection to Certain Proofs of Claim (Incorrect Debtor Claims)* [ECF No. 2027], the Debtors modified the originally filed DRC Claim No. 344 to be asserted against Debtor San Juan Coal Company rather than Debtor Westmoreland Coal Company.

3. The San Juan Claim is hereby allowed as a general unsecured claim in the amount of \$132.80 against Debtor San Juan Coal Company (Case No. 18-35684).

4. The Buckingham Claim is hereby disallowed and expunged in its entirety.

5. The Kemmerer Claim is hereby allowed as a general unsecured claim in the amount of \$9,803.41 and a § 503(b)(9) claim in the amount of \$12,543.22 against Debtor Westmoreland Kemmerer, LLC (Case No. 18-35696).

6. The Resources Claim is hereby allowed as a § 503(b)(9) claim in the amount of \$625.44 against Debtor Westmoreland Resources, Inc. (Case No. 18-35704).

7. The Clerk of the Court is authorized and directed to update the claims register maintained in these chapter 11 cases to reflect the relief granted in this Stipulation and Agreed Order.

8. Except as otherwise provided herein, nothing in this Stipulation and Agreed Order, nor any actions taken pursuant hereto, shall be deemed: (a) an admission as to the validity of any prepetition claim against any Debtor entity; (b) a waiver of any Party's 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 herein; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

9. Neither this Stipulation and Agreed Order, nor any actions taken pursuant hereto, shall constitute evidence admissible against the Parties in any action or proceeding other than one to enforce the terms of this Stipulation and Agreed Order.

10. The terms and conditions of this Stipulation and Agreed Order shall be immediately effective and enforceable upon entry by the Bankruptcy Court.

11. This Stipulation and Agreed Order is intended by the Parties to be binding upon their successors, agents, assigns, including bankruptcy trustees and estate representatives, and any parent, subsidiary, or affiliated entity of the Parties.

12. The undersigned hereby represent and warrant that they have full authority to execute this Stipulation and Agreed Order on behalf of the respective parties and that the respective parties have full knowledge of, and have consented to, this Stipulation and Agreed Order.

13. The Parties agree that each of them, through their respective counsel, has had a full opportunity to participate in the drafting of this Stipulation and Agreed Order and, accordingly, any claimed ambiguity shall be construed neither for nor against either of the Parties.

14. This Stipulation and Agreed Order constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions, agreements, and understandings, both written and oral, among the Parties with respect thereto.

15. This Stipulation and Agreed Order shall not be modified, altered, amended or supplemented except by a writing executed by the Parties or their authorized representatives.

16. The Bankruptcy Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Stipulation and Agreed Order, and the Parties hereby consent to such jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation and Order.

IT IS SO ORDERED.

Signed: September 05, 2019



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

IN WITNESS WHEREOF, the Parties, by their authorized counsel, executed this Stipulation and Agreed Order as of the date written below.

Dated: September 4, 2019

Jackson Walker LLP
1401 McKinney Street, Suite 1900
Houston, Texas 77010
(713) 752-4200 – Main Telephone
(713) 752-4221 – Main Facsimile

/s/ Vienna F. Anaya

Matthew D. Cavanaugh
State Bar No. 24062656
Direct Dial: (713) 752-4284
Email: mcavanaugh@jw.com

Jennifer F. Wertz
State Bar No. 2407282
100 Congress Avenue, Suite 1100
Austin, Texas 78701
Direct Dial: (512) 236-2247
Email: jwertz@jw.com

Vienna F. Anaya
State Bar No. 24091225
2323 Ross Avenue, Suite 600
Dallas, Texas 75201
Direct Dial: (214) 953-6047
Email: vanaya@jw.com

**COUNSEL TO THE
WMLP LIQUIDATION TRUST**

Dated: September 4, 2019

Bryan Cave Leighton Paisner LLP
161 N. Clark Street, Suite 4300
Chicago, Illinois 60601
(312) 602-5000 – Main Telephone
(312) 602-5050 – Main Facsimile

/s/ Aaron Davis

Aaron Davis

Direct Dial: (312) 602-5135

Aaron.davis@bclplaw.com

COUNSEL TO W.W. GRAINGER, INC.

CERTIFICATE OF SERVICE

I certify that on September 4, 2019, a true and correct copy of the above and foregoing was served upon all parties via the Bankruptcy Court's electronic case filing system (ECF).

/s/ Vienna F. Anaya _____

Vienna F. Anaya