

APPENDIX A

1. When WCC entered bankruptcy in October 2018, the Secured Creditors had the first priority interest in WCC and the outcome of the bankruptcy proceedings. WCC filed a Notice of Arbitration and Statement of Claim in November 2018 and owned Prairie at that time. WCC's Secured Creditors held debt securities in WCC having a maturity of more than three years, which NAFTA Article 1139 defines as an "investment." In the bankruptcy process, WMH was created as a wholly-owned subsidiary of WCC. WCC's interests in Prairie and its claim were transferred to WMH and the Secured Creditors promptly became the shareholders of WMH. Prairie remained unchanged as a U.S.-owned investment in Canada.

A. WCC's Secured Debt Exceeded Its Revenue

2. In December 2014, PIMCO, Ivy Investment Management Company and other lenders entered into \$700 million in debt financing with WCC, consisting of: (1) a \$350 million Senior Secured Note loan with a 2022 maturity date; and (2) a \$350 million Term Loan Credit Agreement with a 2020 maturity date.¹ Through these loans, these lenders became Secured Creditors of WCC and, ultimately, shareholders of WMH.

3. The loans restricted WCC's ability to: (1) incur, assume or guarantee additional indebtedness or issue preferred stock; (2) declare or pay dividends on, or make other distributions in respect of, their capital stock; (3) purchase or redeem or otherwise acquire for value any capital stock or subordinated indebtedness; (4) make

¹ See C-032, Westmoreland Coal Company Form 8-K at 2-3 (16 Dec. 2014). WCC later obtained an additional \$75 million under the Term Loan Credit Agreement. See C-033, First Amendment to Credit Agreement (22 Jan. 2015); C-034, PIMCO Funds 2019 Annual Report at 28 (31 March 2020); C-035, Ivy High Income Opportunities Fund Form N-Q at 7 (27 Feb. 2015).

investments, other than permitted investments; (5) create certain liens or use assets as security; (6) enter into agreements restricting the ability of any restricted subsidiary to pay dividends, make loans, or any other distributions to us or other restricted subsidiaries; (7) engage in transactions with affiliates; and (8) consolidate or merge with or into other companies or transfer all or substantially all of their assets.²

4. The loans were secured by a first-priority lien on all WCC's assets, including the stock of WCC's Canadian investments as pledged collateral.³

5. Financial difficulties later befell WCC. WCC had taken on more debt to expand its operations, but revenue from coal sales did not rise and left WCC overleveraged.⁴ Starting in 2016, WCC "undertook a rigorous process to evaluate possible alternatives to deleverage their capital structure," which included the appointment of Jeffrey Stein as an independent member of the WCC Board of Directors in August 2016.⁵ Mr. Stein leads Stein Advisors LLC, a financial advisory firm that provides consulting services to institutional investors on distressed debt and special situations equity investments.⁶

² See C-032, Westmoreland Coal Company Form 8-K at 2-3 (16 Dec. 2014).

³ See C-036, Guaranty and Collateral Agreement between WCC and Bank of Montreal, § 3, Schedule 3.03 (16 Dec. 2014); C-037, Collateral Agreement between WCC and U.S. Bank Nat'l Assn., § 3, Schedule 3.03 (16 Dec. 2014).

⁴ See R-049, Westmoreland Coal Company, et al., Declaration of Jeffrey S. Stein, Chief Restructuring Officer in Westmoreland Coal Company, in Support of Chapter 11 Petitions and First Day Pleadings [Court Docket, Doc. 54] [Excerpt of Declaration] ("Stein First Day Decl.") ¶¶ 60-66 (9 Oct. 2018).

⁵ See R-049, Stein First Day Decl. ¶ 64.

⁶ See R-049, Stein First Day Decl. ¶ 2.

6. WCC began defaulting on its loans in early 2018 and started negotiating with its secured creditors (*i.e.*, the lenders of the Senior Secured Note and Term Loan Agreement,⁷ known as the “Secured Creditors”) and others to restructure their debt.⁸ Absent doing so, WCC would have exhausted all of its remaining liquidity by the end of May 2018.⁹

7. WCC's Canadian operations at that time were profitable and projected to bring in nearly \$510 million in revenue, with an adjusted EBITDA of over \$112 million and unlevered, free cash flow of over \$60 million.¹⁰

B. WCC's Secured Creditors Provide Bridge Loan Financing To Protect Their Investment In Advance Of An Eventual Bankruptcy Petition

8. The Secured Creditors, instead of enforcing their liens and immediately taking control of WCC and its assets, protected their investment interest in WCC through additional financing in advance of a bankruptcy restructuring. On May 21, 2018, WCC, Prairie, and another Westmoreland-entity entered into a Bridge Loan with its Secured Creditors.¹¹ The Bridge Loan provided WCC \$110 million in financing, with an initial funding of \$90 million and a delayed draw (never taken under this facility) of an

⁷ See *supra* ¶¶ 2-4.

⁸ See, *e.g.*, RER-Coleman-Bankruptcy-Memorial on Jurisdiction ¶ 52.

⁹ See R-049, Stein First Day Decl. ¶ 66.

¹⁰ See C-038, Westmoreland Coal Company Discussion Materials at 29 (May 2018).

¹¹ See R-049, Stein First Day Decl. ¶ 77.

additional \$20 million.¹² The Bridge Loan was secured by a first-priority lien on all WCC's assets.¹³

9. The Bridge Loan was provided to WCC in advance of a contemplated bankruptcy filing. Section 9.14 of the Bridge Loan required WCC to enter into a Restructuring Support Agreement with the Secured Creditors. A restructuring support agreement is an agreement between the debtor and certain stakeholders regarding the Chapter 11 bankruptcy process and eventual Plan for emergence.¹⁴

10. Section 13.22 of the Bridge Loan required WCC to obtain debtor-in-possession ("DIP") financing when WCC eventually sought bankruptcy¹⁵; a summary of DIP financing terms¹⁶ was attached to the Bridge Loan as Annex A, demonstrating that a bankruptcy filing was imminent in the next few months.¹⁷

11. The Bridge Loan gave the Secured Creditors increased control over WCC:

¹² See C-039, Westmoreland Coal Company Form 8-K at 2 (21 May 2018); R-049, Stein First Day Decl. ¶ 29.

¹³ See R-049, Stein First Day Decl. ¶ 29

¹⁴ See RER-Coleman-Bankruptcy-Memorial on Jurisdiction ¶ 37.

¹⁵ R-065, Westmoreland Coal Company et al., Declaration of Jeffrey S. Stein in Support of Confirmation of the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtors Affiliates [Court Docket, Doc. 1452] ("Stein Plan Decl.") ¶ 8 (22 Feb. 2019) ("Thereafter, the WLB Debtors utilized their runway [from the bridge financing] to negotiate a consensual restructuring transaction with the [Secured Creditors.] These efforts culminated in the RSA....").

¹⁶ Chapter 11 of the U.S. Bankruptcy Code allows a debtor to obtain financing in aid of restructuring its operations. See, e.g., 11 U.S.C. § 364.

¹⁷ See C-039, Westmoreland Coal Company Form 8-K at 141 (21 May 2018); see also R-049, Stein First Day Decl. ¶ 78 (detailing how WCC and its Secured Creditors engaged in negotiations to prepare for a bankruptcy filing); R-065, Stein Plan Decl. ¶¶ 6-7 (explaining that WCC, in April 2018, sought to engage with its Secured Creditors regarding the terms of post-bankruptcy DIP financing).

- Sections 8.08 and 9.10 limited expenditures from the loaned funds to certain enumerated purposes;
- Section 9.01(j) required WCC to submit a monthly budget to the Secured Creditors for approval of expenditures;
- Section 9.02 allowed the Secured Creditors to review the books and records of WCC; Section 9.13 required WCC to prepare a business plan for the Secured Creditors; Section 9.15 required WCC to maintain a minimum amount of liquidity;
- Section 9.16 required weekly reports comparing the forecast and actual expenditures; Sections 10.01 to 10.11 limited WCC's ability to take on additional debt, issue dividends, sell or buy assets, merge, consolidate, or engage in business operations other than those currently in existence (or reasonably complementary to those businesses);
- Sections 10.12 required that the Secured Creditors approve bonuses to certain employees; and
- Section 10.13 required that WCC's operating disbursements could not exceed the Approved Budget amount by more than certain pre-set variance percentages.

C. WCC Files For Bankruptcy

12. WCC and certain subsidiaries (but not including Prairie) entered into Chapter 11 Bankruptcy on October 9, 2018.¹⁸ The Secured Creditors included PIMCO, Stonehill Institutional Partners, Ivy Investment Management Company, Cross Sound Management, MSD Partners, and Oaktree Capital Management.¹⁹ These Secured Creditors are U.S. nationality persons.

13. Through various agreements, motions, and court orders, the Secured Creditors continued their commitment to fund WCC. In return, the Secured Creditors

¹⁸ See generally R-049, Stein First Day Decl.

¹⁹ R-061, Kramer Levin Naftalis & Frankel LLP & Porter Hedges LLP, *Verified Statement of Kramer Levin Naftalis & Frankel LLP and Porter Hedges LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019* [Court Docket, Doc. 496] (14 Nov. 2018).

were entitled to control how their money was spent; the form and substance of various bankruptcy filings to ensure their rights were protected; how the company would be restructured through the bankruptcy process; and the plan for reemergence from the bankruptcy process.

1. WCC Executes The Restructuring Support Agreement, Giving The Secured Creditors Still More Control Over WCC

14. The same day WCC filed for bankruptcy protection (October 9, 2018), WCC and the Secured Creditors executed the Restructuring Support Agreement.²⁰ Under this agreement, WCC committed to take all steps needed to support the restructuring and to obtain approval: (1) from the Secured Creditors for any collective bargaining extensions or renewals; (2) from the Secured Creditors before any changes or extensions to any revenue-generating contracts longer than six-months; and (3) for certain bonus payments. WCC also committed to comply with the milestones set forth in the Restructuring Support Agreement.²¹

15. The Restructuring Support Agreement gave the Secured Creditors an effective right to control the bankruptcy process. Section 3 of the Restructuring Support Agreement required that WCC obtain consent from the Secured Creditors for significant

²⁰ See generally R-050, Westmoreland Coal Company, et al., Restructuring Support Agreement, Exhibit A to Declaration of Jeffrey S. Stein in Support of Chapter 11 Petitions and First Day Pleadings [Court Docket, Doc. 54] [Excerpt] ("Restructuring Support Agreement") §§ 5.01-5.03 (9 Oct. 2018).

²¹ See R-050, Restructuring Support Agreement § 7.01.

filings in the bankruptcy court, filings that²² “shall be in form and substance reasonably acceptable” to the Secured Creditors.²³

16. Section 4 of the Restructuring Support Agreement gave the Secured Creditors the right to appoint an “Operational Observer” who, while unable to control WCC’s operations, had access “during normal business hours to the Company’s executive and management-level personnel and mining facilities in order to monitor and assist with...the Company’s day-to-day operations.”

17. Exhibit A to the Restructuring Support Agreement included a term sheet for the proposed Plan. Exhibit B was a sale transaction term sheet, setting forth the proposed terms and conditions of a potential sale of WCC. The proposed DIP Financing Order that WCC was to file was attached to the agreement.

18. Exhibit 2 to the Restructuring Support Agreement set forth various milestone dates for WCC to file its bankruptcy petitions; obtain Debtor-in-Possession (“DIP”) Financing; file the bidding procedures for the sale of assets; receive bids for the

²² These filings included: (1) WCC’s Plan for repaying their creditors (and the Plan Supplement, which included materials such as the “Stalking Horse” Purchase and Sale Agreement and the Description of the Transaction Steps for consummating the transaction) and the proposed Confirmation Order for the Court to approve the Plan; (2) the Disclosure Statement and the proposed order for the Disclosure Statement, so that interested parties have sufficient detail to make an informed decision about the Plan; (3) the DIP Financing Agreement, the Motion seeking court approval of this financing agreement, and the proposed Court Order approving this agreement; (4) the so-called “First Day” Pleadings, which are the motions that ensure a debtor can continue running its business by being permitted to pay certain pre- and post-petition expenses; and (5) the filings relating to the sale of WCC’s assets, such as the Bidding Procedures Motion and proposed Order for the Court to approve the bidding procedures. See R-050, Restructuring Support Agreement § 3.01.

²³ R-050, Restructuring Support Agreement § 3.02.

sale of assets; file the Plan with the bankruptcy court; conclude the bankruptcy through a confirmed Plan of reorganization.

19. The Secured Creditors could terminate the Restructuring Support Agreement for multiple reasons, including WCC's breach of the Restructuring Support Agreement; WCC accepting a restructuring proposal not approved by the Secured Creditors; WCC's failure to comply with certain enumerated milestones; inability to obtain entry of an order authorizing DIP Financing; default under the DIP Financing Agreement; and any modification to the key bankruptcy filings absent approval of the Secured Creditors.²⁴

20. Termination of the Restructuring Support Agreement would enable the Secured Creditors to enforce their liens against WCC.²⁵

2. The Secured Creditors Obtained Further Control Over WCC And Prairie Through the DIP Financing Agreement

21. On October 9, 2018 (the day the bankruptcy petition was filed), WCC, Prairie, and another Westmoreland entity also executed the DIP Financing Agreement.²⁶ The DIP Financing Agreement was, essentially, a re-packaging of the May 2018 Bridge Loan—\$90 million with additional draws available worth up to \$20

²⁴ See R-050, Restructuring Support Agreement § 13.01.

²⁵ See R-050, Restructuring Support Agreement § 13.05.

²⁶ See C-040, Final Order (Court Docket, Doc. 520), Exhibit 1, DIP Credit Agreement at 71 (15 Nov. 2018); C-041, Interim Order (Court Docket, Doc. 92), Exhibit 1, DIP Credit Agreement at 64 (10. Oct. 2018).

million (to be used for operating expenses and for costs to effectuate the restructuring)—with some additional terms and conditions.²⁷

22. Just like the Bridge Loan, the DIP Financing Agreement came with conditions that provided the Secured Creditors with further control over WCC. Section 6.21 required that WCC provide the Secured Creditors with an initial budget for their approval and with regular updates to be provided in accordance with section 9.01(j). Section 9.02 allowed the Secured Creditors to review the books and records of WCC. Section 9.15 required WCC to maintain a minimum amount of liquidity. Section 9.16 required weekly reports comparing the forecast and actual expenditures. Section 10.13 provided that operating disbursements could not exceed the Approved Budget amount by more than certain pre-set variations.

23. Sections 10.01 through 10.11 limited WCC from obtaining additional debt; issuing dividends; selling or buying assets; merging, consolidating or engaging in new business operations. Section 10.12 required that WCC obtain Secured Creditor approval for bonuses to certain employees.

24. Sections 6.22 and 9.14 required that WCC obtain approval of the Secured Creditors for the first and second day orders that would permit WCC to function during the bankruptcy proceeding as an ongoing concern, such as payment to employees and key suppliers and for operational expenses.²⁸ Section 9.12 enumerated milestones to complete the bankruptcy process, such as when certain motions would be filed, when

²⁷ See C-040, Final Order (Court Docket, Doc. 520) at 10, 205; C-041, Interim Order (Court Docket, Doc. 92) at 13, 207.

²⁸ See C-040, Final Order (Court Docket, Doc. 520), Exhibit 1, DIP Credit Agreement, §§ 6.22, 9.14.

the sale process would take place, and when a confirmed Plan of bankruptcy would be entered.²⁹

25. Section 11 detailed Events of Default under the DIP Financing Agreement, including:

- breaches of the DIP Financing Agreement, such as failing to provide the budget updates in § 9.01(j)³⁰;
- WCC's failure to comply with Orders of the bankruptcy court³¹;
- entry of certain orders absent approval of the Secured Creditors³²;
- making certain pre-bankruptcy petition payments except as approved by the Secured Creditors³³;
- use of funds in a manner inconsistent with the approved budget or as allowed under the DIP Financing Agreement³⁴;
- failure to agree to an acceptable Plan for the bankruptcy reorganization or to follow the Restructuring Support Agreement³⁵; or
- an attempt to sell WCC assets absent approval of the Secured Creditors.³⁶

Section 11.24 specified that the Secured Creditors could enforce their liens for any default.³⁷ The liens were secured by all WCC's assets, including those of Prairie. A

²⁹ See C-040, Final Order (Court Docket, Doc. 520), Exhibit 1, DIP Credit Agreement, § 9.12.

³⁰ See C-040, Final Order (Court Docket, Doc. 520), Exhibit 1, DIP Credit Agreement, § 11.03.

³¹ See C-040, Final Order (Court Docket, Doc. 520), Exhibit 1, DIP Credit Agreement, § 11.14.

³² See *id.*

³³ See C-040, Final Order (Court Docket, Doc. 520), Exhibit 1, DIP Credit Agreement, § 11.15.

³⁴ See C-040, Final Order (Court Docket, Doc. 520), Exhibit 1, DIP Credit Agreement, § 11.16.

³⁵ See C-040, Final Order (Court Docket, Doc. 520), Exhibit 1, DIP Credit Agreement, § 11.18.

³⁶ See C-040, Final Order (Court Docket, Doc. 520), Exhibit 1, DIP Credit Agreement, § 11.21.

³⁷ See C-040, Final Order (Court Docket, Doc. 520), Exhibit 1, DIP Credit Agreement, § 11.24.

default by WCC would have ensured that the Secured Creditors would take possession of all WCC's assets.

26. The Bankruptcy Court approved the DIP Financing Agreement, first through an Interim Order on October 10, 2018 and later through a substantially similar Final Order on November 15. The Interim Order ensured the DIP Financing that WCC obtained from its Secured Creditors held the most senior lien over WCC's assets and that the liens the Secured Lenders held under the December 2014 loans remained outstanding.³⁸

27. The Bankruptcy Court's Interim Order fixed an initial budget with limits on how much WCC could spend. WCC was required to provide weekly reports to the Secured Creditors.³⁹ Any failure to meet any of the DIP Financing milestones would constitute an Event of Default.

3. The Secured Creditors Were The Only Bidders For WCC

28. Pursuant to the bidding procedures they approved,⁴⁰ the Secured Creditors set a stalking horse credit bid (*i.e.*, pledging a portion of the debt owed to them) of \$390,125,429.40 for WCC's assets, roughly 55% of the amount of the First Lien Claims.⁴¹ Those assets included Prairie and the NAFTA claim.⁴²

³⁸ See C-040, Final Order (Court Docket, Doc. 520) ¶¶ 3, 5.

³⁹ See C-041, Interim Order (Court Docket, Doc. 92) at 27, 207.

⁴⁰ See *supra* ¶ 15.

⁴¹ R-065, Stein Plan Decl. ¶ 22; R-054, Order Approving Bidding Procedures [Court Docket, Doc. 519] at 19, n.5 (15 Nov. 2018).

⁴² See, e.g., RER-Coleman-Bankruptcy-Memorial on Jurisdiction ¶¶ 74, 76, 79.

29. WCC and the Secured Creditors (along with certain other interested parties) were entitled to review the bids to ensure they provided a “value equal to or greater than the aggregate cash considerations, assumed liabilities, and other non-cash consideration contemplated by the Stalking Horse Bid” from the Secured Creditors.⁴³ To qualify as an acceptable bid, WCC and the Secured Creditors needed to determine that each bid was “substantially on the same or better terms than the terms of the Stalking Horse Purchase Agreement.”⁴⁴ To the extent a bidder other than the Secured Creditors would have won the auction, the Secured Creditors would have been entitled to “cash equal either to the allowed amount of such First Lien Claim or an amount as otherwise agreed to by” WCC and the Secured Creditors.⁴⁵

30. No other bids were submitted.⁴⁶ The remaining debt WCC owed to the Secured Creditors (beyond the 55% of the debt that the creditors bid) was satisfied through a combination of new loans and cash.⁴⁷

D. There Was A Contemporaneous Ownership Among WCC, WMH And Prairie At The Time Of The Transfer Of Prairie And The NAFTA Claim

31. The parties followed a detailed procedure to effectuate the transfer of assets from WCC to the Secured Creditors. The Secured Creditors did not buy only the relevant WCC assets; instead, the transaction was structured to have WCC become

⁴³ R-054, Order Approving Bidding Procedures at 19.

⁴⁴ R-054, Order Approving Bidding Procedures at 20; see also *id.* at 23 (Only Bids fulfilling all of the preceding requirements contained in this section may, at the WLB Debtors' reasonable discretion, after consultation with the Consultation Parties be deemed to be “Qualified Bids....”).

⁴⁵ R-049, Stein First Day Decl. ¶ 49.

⁴⁶ R-065, Stein Plan Decl. ¶ 22.

⁴⁷ See RER-Coleman-Bankruptcy-Memorial on Jurisdiction n. 72.

100% owner of the equity interests of WMH (who held all of the assets at issue in this dispute) and to distribute the entirety of those equity interests in WMH to the Secured Creditors of WCC. The transfer was accomplished through the bankruptcy process that was largely controlled by the Secured Creditors. They had approval rights over bankruptcy filings; the structure of the sale process; WCC's budget; and the timing of the process.

32. On March 2, 2019, the Court entered its Order confirming the Plan:

The Plan (including the Plan Supplement) is confirmed pursuant to section 1129 of the Bankruptcy Code....The documents contained in the Plan Supplement and in the exhibits to the Plan are integral to the Plan and are approved by the Bankruptcy Court....The terms of the Plan, the Plan Supplement, and any exhibits thereto are incorporated herein by reference, and are an integral part of this Confirmation Order.⁴⁸

The Plan Supplement was one of the documents requiring approval of the Secured Creditors.⁴⁹

33. The Plan defined the "Description of Transaction Steps" as "the steps to be carried out to effectuate the Restructuring Transactions in accordance with the Plan and as set forth in the Plan Supplement." The Plan provided that the corporate restructuring would take place in accordance with the Description of Transaction Steps in the Plan Supplement upon the entry of the court's order confirming the Plan.⁵⁰

⁴⁸ C-042, Order Confirming Amended Joint Chapter 11 Plan of WCC and Certain Debtor Affiliates (Court Docket, Doc. 1561) at 2-3 (2 March 2019).

⁴⁹ *Supra* ¶ 15.

⁵⁰ *E.g.*, C-042, Order Confirming Amended Joint Chapter 11 Plan of WCC and Certain Debtor Affiliates (Court Docket, Doc. 1561) at 77 (2 March 2019).

The Purchase and Sale Agreement, one of the documents forming the Plan Supplement, further provided that the assets “shall be effected in accordance with the Description of Transaction Steps.”⁵¹

34. The “Description of Transaction Steps,” forming part of the Plan Supplement,⁵² set forth a multi-step process that effectuated the formal transfer of WCC’s assets from WCC to its Secured Creditors:

35. Step 1. The purchaser of the assets was Westmoreland Mining Acquisition LLC (later rebranded Westmoreland Mining LLC, known in the Description of Transaction Steps as the “Purchaser”). Certain WCC subsidiaries transferred their own membership interests to the Purchaser; in exchange, those subsidiaries received membership interests in the Purchaser. These WCC subsidiaries then distributed all their membership interests in the Purchaser to WCC. At this point, WCC owned 100% of the Purchaser.⁵³

36. Step 2. Claimant, Westmoreland Mining Holdings, was then formed, with a member of the Secured Creditors group serving as the initial sole member. WCC, which owned 100% of the Purchaser, contributed 100% of its interest in the Purchaser to Claimant. In return, WCC received 100% of the membership interests of Claimant:

⁵¹ C-043, Notice of Sixth Amendment to the Plan Supplement (Court Docket, Doc. 1621) at 166-167 (18 March 2019); see also C-042, Order Confirming Amended Joint Chapter 11 Plan of WCC and Certain Debtor Affiliates (Court Docket, Doc. 1561) at 58 (2 March 2019) (detailing which documents constituted part of the Plan Supplement).

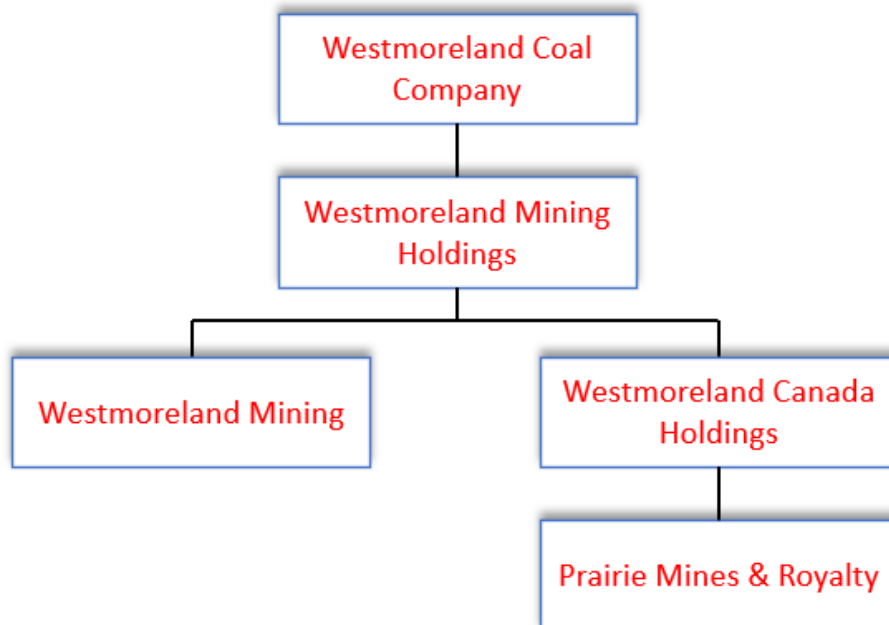
⁵² C-043, Notice of Sixth Amendment to the Plan Supplement (Court Docket, Doc. 1621) at 5 (18 March 2019).

⁵³ See C-043, Notice of Sixth Amendment to the Plan Supplement (Court Docket, Doc. 1621) at 12 (18 March 2019). For the avoidance of doubt, these steps are a summary of the steps relevant to this portion of the transaction and do not intend to capture other irrelevant steps.

“This contribution shall cause WCC to own 100% of the equity of [Claimant] immediately following this step, and the initial sole member of [Claimant] shall withdraw from [Claimant in connection with the contribution to [Claimant] and the equity issuance by [Claimant] to WCC....”⁵⁴

37. Step 3. Westmoreland Canada Holdings, Inc., which owned Prairie, contributed its stock to Claimant in exchange for additional membership interests in Claimant. That membership interest in Claimant was distributed to WCC so that WCC owned 100% of the membership interests in Claimant.⁵⁵

38. WCC now owned 100% of Claimant, and Claimant owned 100% of Prairie:



⁵⁴ *Id.* at page 13. WCC also received a portion of the debt issued by Claimant.

⁵⁵ *Id.* at 14. Westmoreland Canada Holdings also received the remainder of the debt issued by Claimant, which Westmoreland Canada Holdings distributed to WCC. WCC thus owned all the debt issued by Claimant.

39. Step 4. WCC then distributed 100% of the equity interests in Claimant to the Secured Creditors. The distributions were in full satisfaction of the claims the Secured Creditors held against WCC.⁵⁶ Thus, the Secured Creditors—who could have enforced their liens to take the entirety of WCC and its assets—purchased a WCC subsidiary holding those same assets by virtue of the bankruptcy process.

40. The Secured Creditors, who included PIMCO, Stonehill Institutional Partners, Ivy Investment Management Company, Cross Sound Management, MSD Partners, and Oaktree Capital Management (all of whom were U.S. nationality entities), became Claimant's shareholders "on a pro rata basis (in accordance with their respective First Lien Secured Claim amounts)."⁵⁷

41. The transaction was structured in this way to qualify as a "Type G" reorganization,⁵⁸ by which an entity may restructure tax-free. The transferee entity (here, Claimant) can accrue the tax history of the debtor corporation, allowing it to use certain tax losses to offset future profits and reduce the tax burden of the new entity.⁵⁹

⁵⁶ WCC also distributed the debt it obtained to Claimants and any cash proceeds from certain other asset sales. *Id.* at 14.

⁵⁷ *Id.* at 14.

⁵⁸ C-044, Order Approving Disclosures and Notices of Chapter 11 Plan (Court Docket, Doc. 841) at 84-87 (19 Dec. 2018) (detailing potential tax treatment); C-043, Notice of Sixth Amendment to the Plan Supplement (Court Docket, Doc. 1621) at 216 (18 March 2019).

⁵⁹ See 26 U.S.C. § 368(a)(1)(G).