

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

WESTMORELAND COAL COMPANY, *et al.*,  
Debtors<sup>1</sup>.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

**LIMITED OBJECTION AND RESERVATION OF  
RIGHTS OF WHEELER MACHINERY CO.**

Wheeler Machinery Co. (“**Wheeler**”), by and through its undersigned counsel, files the following limited objection and reservation of rights (the “**Limited Objection**”) in accordance with the *Schedule of Cure Amounts* [Dkt. No. 1295] (the “**Notice**”) filed by the above captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) in connection with the *Expedited Motion of Westmoreland Resource Partners, LP and Its Subsidiaries for Entry of (I) An Order (A) Establishing Bidding and Sale Procedures with Respect to the Sale of the Kemmerer Mine and Substantially All Assets Related Thereto, (B) Authorizing the Entry Into a Stalking Horse Agreement and the Provision of Stalking Horse Protections, (C) Scheduling an Auction and Sale Hearing and Approving the Form and Manner of Notice Thereof and (D) Granting Related Relief; and (II) an Order Approving the Sale of such Assets and Granting Related Relief* [Dkt. No. 1101] (the “**Sale Motion**”) and the subsequent Order entered on February 4, 2019 [Dkt. No.

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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.

1287] (the “**Sales Procedures Order**”) granting the Sale Motion. In support thereof, Wheeler respectfully state as follows:

1. On October 9, 2018, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being administered jointly.

2. The Notice provides a list of executory contracts and/or unexpired leases that the Debtors “may” assume and/or assign. Therein, the Debtors indicate that they may assume and/or assign the *Advanced Condition Monitoring Service Agreement* (the “**ACMS Agreement**”) between Westmoreland Kemmerer, LLC (“**Kemmerer**”) and Wheeler. In relation thereto, the Debtors also propose a “Cure Cost, if applicable” of \$144,543.41.

#### **Limited Objection**

3. Wheeler does not object to the assumption and/or assignment of the ACMS Agreement or the proposed cure asserted therein; however, Wheeler maintains numerous rental agreements with Kemmerer (the “**Rental Agreements**”), none of which appear to be presently included in the list of executory contracts and/or unexpired leases to be assumed and/or assigned under the Notice.

4. Attached hereto as **Exhibit A** is a list of the Rental Agreements for which outstanding rental payments are due and owing as of February 14, 2019 in the aggregate amount of \$32,041.60. To the extent assumed, any such outstanding rental payments should be included and paid as part of any cure.

5. In an abundance of caution, Wheeler asserts this limited objection to the extent the Debtors propose to assume and/or assign any of the Rental Agreements without curing any and all defaults thereunder in accordance with the requirements of section 365 of the Bankruptcy Code.

### **RESERVATION OF RIGHTS**

6. Wheeler hereby reserves its rights to change and/or amend the amounts asserted herein should additional information become available warranting such action. Wheeler further reserves all of its rights, claims, defenses, and remedies under the Bankruptcy Code and other applicable law with respect to the same.

7. Furthermore, nothing in this Limited Objection is intended to be, or should be construed as, a waiver by Wheeler of any of its rights under the AMCS Agreement, the Rental Agreements, any other applicable contract, lease and/or rental agreement, the Bankruptcy Code, or applicable law.

WHEREFORE, based upon the foregoing and for good cause shown, Wheeler respectfully requests that the Court sustain this Limited Objection and grant such other and further relief as the Court may deem just and proper.

Dated: February 21, 2019

Respectfully submitted,

/s/ Cullen D. Speckhart

Cullen D. Speckhart (TX Bar No. 2158405)

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 21, 2019, the foregoing *Limited Objection and Reservation of Rights of Wheeler Machinery Co.* was served on all parties receiving electronic notification via the Court's CM/ECF system.

Further, I certify that a copy of the foregoing document will be served by mail on February 21, 2019 on all parties to receive service under the General Objection Procedures as defined in Docket No. 1101-3.

/s/ Cullen D. Speckhart

Cullen D. Speckhart, Esq.

**EXHIBIT A**

<b>Wheeler Machinery Co. Rental Agreement Summary</b>					
<b>Customer No.</b>	<b>Customer name</b>	<b>Agreement No.</b>	<b>Doc. Date</b>	<b>Equipment</b>	<b>Rental Payments Due (as of 2/14/2019)</b>
73377	Westmoreland Kemmerer Inc.	C62001	6/18/2018	Wheel Loader 908 ID No. AA006296 Serial No. 0H8802430	\$ 2,412.65
73377	Westmoreland Kemmerer Inc.	814780	10/1/2018	Generator - 45KVA Mutliquip ID No. EC4200 Serial No. 7252393	\$ -
73377	Westmoreland Kemmerer Inc.	814779	10/1/2018	Generator - 45KVA Mutliquip ID No. EC4198 Serial No. 7252391	\$ -
73377	Westmoreland Kemmerer Inc.	C62003	10/10/2018	Wheel Tractor Scraper ID No. RRT00306 Serial No. 0DFJ00444	\$ -
73377	Westmoreland Kemmerer Inc.	C62004	10/10/2018	18MS Motor Grader ID No. RRT00307 Serial No. 0N9A00236	\$ 26,880.00
73377	Westmoreland Kemmerer Inc.	814963	1/7/2019	70 KVA Genset ID No. EC4204 Serial No. 7354595	\$ 2,748.95
<b>TOTAL</b>					<b>\$ 32,041.60</b>