

**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**”) to the *Third Supplemental Notice of (A) Executory Contracts and Unexpired Leases to be Assumed or Assumed and Assigned by Westmoreland Coal Company and Certain of its Debtor Affiliates Pursuant to the Plan, (B) Cure Costs, If Any, and (C) Related Procedures In Connection Therewith* [Docket No. 1606] (the “**Supplemental Notice**”), filed by the above captioned debtors and debtors-in-possession (collectively, the “**Debtors**”). In support thereof, Wheeler respectfully states 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

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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.

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. On March 15, 2019, the Debtors filed the Supplemental Notice, which listed certain executory contracts and/or unexpired leases that the Debtors intend to assume and/or assume and assign, including the following: *Vendor Managed Inventory Agreement* (the "**VMI Agreement**"), which is asserted as between Westmoreland Mining LLC and Wheeler; and *Trade Agreement – 1/2/19* (the "**Trade Agreement**"), which is asserted as between Westmoreland Coal Company and Wheeler.

3. Wheeler does not object to the assumption and/or assignment of either the VMI Agreement or the Trade Agreement; however, it does disagree with the amount proposed in the Supplemental Notice as sufficient to cure any and all defaults under the VMI Agreement. Based on Wheeler's current estimates as of March 27, 2019, approximately \$78,262.10 is past due with an additional \$71,767.39 owing under the VMI Agreement (aggregate amount owing of \$150,029.49). Any and all outstanding balances, either stated herein or as may hereafter accrue, should be included in any cure.

4. Wheeler asserts this limited objection to the Supplemental Notice to the extent the Debtors propose to assume and/or assign the VMI Agreement without curing any and all defaults thereunder in accordance with the requirements of section 365 of the Bankruptcy Code.

#### **Reservation of Rights**

5. 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.

6. 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 VMI Agreement, the Trade Agreement, 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 the Limited Objection and grant such other and further relief as the Court may deem just and proper.

Dated: March 29, 2019

Respectfully submitted,

/s/ Cullen D. Speckhart  
Cullen D. Speckhart (TX Bar No. 2158405)  
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*Counsel to Wheeler Machinery Co.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this March 29, 2019, the foregoing *Limited Objection and Reservation of Rights of Wheeler Machinery Co.* was served via electronic filing to all parties requesting/receiving electronic notice in this case.

Further, I certify that a copy of the foregoing document will be served by mail on March 29, 2019 on all Notice Parties as defined in the Supplemental Notice.

/s/ Cullen D. Speckhart  
Cullen D. Speckhart, Esq.