



ENTERED
04/10/2019

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

WESTMORELAND COAL COMPANY, *et al.*,
Debtors¹.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

**STIPULATION AND AGREED ORDER RESOLVING LIMITED OBJECTION AND
RESERVATION OF RIGHTS OF OHIO MACHINERY CO. AND OMCO LEASING
CORPORATION REGARDING ASSUMPTION AND ASSIGNMENT OF CONTRACTS
AND RELATED CURE AMOUNTS**

(Docket Nos. 1243 and 1700)

This stipulation and agreed order is entered into by and among Ohio Machinery Co., d.b.a. Ohio CAT (“**Ohio CAT**”), OMCO Leasing Corporation (“**OMCO**”), Westmoreland Resource Partners, LP and certain of its direct and indirect subsidiaries, including Oxford Mining Company, LLC, who are debtors in the above-captioned cases (collectively, the “**WMLP Debtors**”), and CCU Coal and Construction, LLC (“**CCU**,” and together with Ohio CAT, OMCO, and the WMLP Debtors, each a “**Party**” and collectively, the “**Parties**”) upon the following terms and conditions:

WHEREAS, on January 22, 2019, the WMLP Debtors, with other then-debtors, filed the *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 the Assumption and Assignment of Executory Contracts and Unexpired Leases In Connection Therewith, and (III)*

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 WMLP Debtors’ 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.

Granting Related Relief, Including Approval of the Related Sale Process [Dkt. No. 1116] (the “**Motion**”), which included a proposed notice, attached as Exhibit E to the same, with a preliminary listing of executory contracts and/or unexpired leases that the WMLP Debtors may seek to assume and assign in connection with the proposed sale transactions described in the Motion (the “**Preliminary Contract List**”). The Preliminary Contract List included various agreements with Ohio CAT and OMCO and proposed cure amounts.

WHEREAS, on February 1, 2019, Ohio CAT and OMCO filed their *Limited Objection and Reservation of Rights of Ohio Machinery Co. And OMCO Leasing Corporation* [Dkt. No. 1243] (the “**Limited Objection**”) objecting to the cure amounts listed in the Preliminary Contract List.

WHEREAS, on February 5, 2019, the Court entered an order [Dkt. No. 1289] approving the Motion (the “**Sale Order**”) and therein approving, among other things, an Asset Purchase Agreement between the WMLP Debtors and CCU with respect to the purchase of the WMLP Debtors’ Oxford mining business (the “**Oxford APA**”) and the assumption and assignment of executory contracts and unexpired leases in connection therewith, as provided for therein. The sale transaction pursuant to the Oxford APA closed on February 11, 2019 (the “**Closing Date**”).

WHEREAS, on February 25, 2019, the WMLP Debtors filed a final list of executory contracts and unexpired leases to be assumed and assigned in connection with the sale transaction for the WMLP Debtors’ Oxford business [Dkt. No. 1490] (the “**Final Contract List**”). The inclusion of agreements with OMCO and Ohio CAT on the Final Contract List was made subject to the terms of this stipulation.

WHEREAS, the Parties have agreed to fully and finally resolve the Limited Objection and the cure amounts for each of the Ohio CAT and OMCO agreements that were assumed and assigned to CCU pursuant to the Sale Order and Oxford APA as set forth herein.

WHEREFORE, based upon the foregoing, and for good cause shown, it is hereby stipulated and agreed, and upon approval by the Court of this stipulation, it is hereby adjudged, ordered and decreed:

1. The foregoing recitals are hereby incorporated herein by reference.

The OMCO Agreement

2. Pursuant to the Sale Order and the Oxford APA, the WMLP Debtors have assumed and assigned to CCU that certain *Addendum to Lease Agreement – Caterpillar 994F Loader (S/N 44200151)* (the “**OMCO Lease**”) concerning a Caterpillar 994F Loader (S/N 44200151) (the “**OMCO 994F Loader**”).

3. In full and final satisfaction of all obligations owing under the OMCO Lease, including all cure amounts, and in consideration for CCU’s agreement to purchase the OMCO 994F Loader, OMCO agrees to sell and CCU agrees to buy the OMCO 994F Loader for \$230,000.00, which CCU shall pay to OMCO by wire transfer on or before April 5, 2019. Upon receipt of such payment, all defaults under the OMCO Lease shall be deemed cured, the OMCO Lease shall be deemed terminated, and CCU shall not have any further liability under the OMCO Lease. OMCO agrees to provide CCU with a bill of sale and such other documentation as CCU may reasonably request from time to time to evidence the sale of the OMCO 994F Loader and the termination of the OMCO Lease.

The Ohio CAT Agreements

4. **Continuing Agreements.** Pursuant to the Sale Order and the Oxford APA, the WMLP Debtors have assumed and assigned to CCU the rental agreements identified in Exhibit A attached hereto (collectively, the “Continuing Agreements”) concerning various pieces of equipment.

5. In full and final satisfaction of all obligations and defaults under the Continuing Agreements that were outstanding or that existed as of the Closing Date, including all cure amounts, CCU agrees to pay the cure amounts listed on Exhibit A attached hereto totaling \$9,960.00, which CCU shall pay to Ohio CAT by wire transfer on or before April 5, 2019. Upon receipt of the cure payments described in this paragraph, all defaults under the Continuing Agreements as of the Closing Date shall be deemed cured.²

6. **Non-Continuing Agreements.** Pursuant to the Sale Order and the Oxford APA, the WMLP Debtors have assumed and assigned to CCU the rental agreements identified in Exhibit B attached hereto (collectively, the “Non-Continuing Agreements”) concerning numerous items of rental equipment (the “Non-Continuing Equipment”).

7. In full and final satisfaction of all obligations and defaults under the Non-Continuing Agreements that were outstanding or that existed as of the Closing Date, including all cure amounts, CCU agrees to pay the cure amounts listed on Exhibit B totaling \$119,671.38, which CCU shall pay to Ohio CAT by wire transfer on or before April 5, 2019. Upon receipt of the cure payments described in this paragraph, all defaults under the Non-Continuing Agreements as of the Closing Date shall be deemed cured, the Non-Continuing Agreements shall be deemed terminated, and CCU shall not have any further liability under the Non-Continuing

² The cure amounts for the Continuing Agreements reflect an agreement by Ohio CAT to reduce the prepetition portion of the cure amounts by 50%.

Agreements.³ In consideration of the termination of the Non-Continuing Agreements and all future obligations owed by CCU thereunder as contemplated herein, CCU has returned the Non-Continuing Equipment to Ohio CAT, and Ohio CAT has confirmed receipt of the returned Non-Continuing Equipment.

8. **Other Agreements.** The WMLP Debtors have not assumed or assigned rental agreement no. G95367 (the "G95367 Agreement") concerning a Pump, 10"x8" High Head Diesel (S/N 1623081) (the "G95367 Pump"); however, in full and complete satisfaction of any and all use of the G95367 Pump by CCU following the Closing Date, CCU agrees to pay \$3,693.79, which CCU shall pay to Ohio CAT by wire transfer on or before April 5, 2019. Upon receipt of the payment described in this paragraph, CCU shall not have any further liability under the G95367 Agreement. For the avoidance of doubt, nothing herein shall be construed as a release and/or waiver of the WMLP Debtors' obligations under the G95367 Agreement for use of the G95367 Pump prior to the Closing Date, and nothing herein shall prejudice rights of Ohio CAT to assert post-petition administrative claim or claims against the WMLP Debtors for such amounts due in connection therewith and/or pursuant to 11 U.S.C. §§ 365, 503 or as otherwise permitted under the Bankruptcy Code. The WMLP Debtors reserve all rights to dispute any such claims related to the G95367 Pump on any basis other than this Stipulation or the assumption, assignment and/or cure payments provided for herein and pursuant to 11 U.S.C. § 365.

Full Satisfaction of CCU Obligations / Reservation of Rights

9. The foregoing terms are in full and final satisfaction of all obligations of CCU for liabilities existing as of the Closing Date with respect to the agreements being assumed and assigned herein.

³ The cure amounts for the Non-Continuing Agreements reflect an agreement by Ohio CAT to reduce the prepetition portion of the cure amounts by 50%.

10. Ohio CAT asserts that certain of the equipment subject to either the Continuing Agreements or the Non-Continuing Agreements have suffered damages resulting in financial injury to Ohio CAT (the “Damages”). Ohio CAT reserves the right to assert a post-petition administrative claim or claims against the WMLP Debtors for such Damages under 11 U.S.C. §§ 365, 503 or as otherwise permitted under the Bankruptcy Code, notwithstanding the assumption, assignment, and cure payments provided for herein and in connection with the foregoing agreements. For the avoidance of doubt, neither this Stipulation nor the assumption, assignment and/or cure payments provided for herein and pursuant to 11 U.S.C. § 365 shall in any way prejudice the rights of Ohio CAT to assert such claim or claims against the WMLP Debtors for the Damages. The WMLP Debtors reserve all rights to dispute the merits of any such claims related to the Damages on any basis other than this Stipulation or the assumption, assignment and/or cure payments provided for herein and pursuant to 11 U.S.C. § 365.

11. As indicated herein, Ohio CAT has agreed to a fifty percent (50%) reduction of the prepetition portion of the cure amounts due under the Continuing Agreements and Non-Continuing Agreements. In consideration thereof, Ohio CAT shall be and hereby is allowed a pre-petition unsecured claim against the WMLP Debtors in the amount of this reduction, which amounts to \$44,711.44.

Signed: April 10, 2019



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

SEEN AND AGREED:

Houston, Texas
April 9, 2019

/s/ Cullen D. Speckhart

Cullen D. Speckhart (TX Bar No. 2158405)

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*Conflicts Counsel for the WMLP Debtors and
Counsel for the Conflicts Committee of the
Westmoreland Resources GP, LLC Board of
Directors*

EXHIBIT A

| Ohio Machinery Co. Continuing Agreements | | | | |
|---|------------------------|----------------------|---|--|
| Customer No. | Customer Name | Agreement No. | Equipment Description | Discounted Rental Payments Due (as of Closing Date) |
| 1057420 | OXFORD MINING /SLS RTR | G31140 | Broce Broom, KR-350 Self-Propelled Sweeper Serial No. 409078 ID No. R81950 | \$6,300.00 |
| 1057420 | OXFORD MINING /SLS RTR | G95481 | 6"x4" PA Trash Pump Serial No. 1672441 ID No. R84746 | \$3,660.00 |
| TOTAL | | | | \$9,960.00 |

EXHIBIT B

| Ohio Machinery Co. Non-Continuing Agreements | | | | |
|---|---------------------------|----------------------|---|--|
| Customer No. | Customer Name | Agreement No. | Equipment Description | Discounted Rental Payments Due (as of Closing Date) |
| 1057420 | OXFORD MINING /SLS RTR | L05744 | Caterpillar D6T LGP VP 2015 Serial No. 0RAD00473 ID No. H14124 | \$18,495.00 |
| 1057420 | OXFORD MINING /SLS RTR | L05745 | Caterpillar 323FL 2016 Serial No. 0XCF01397 ID No. H14932 | \$11,188.34 |
| 1057420 | OXFORD MINING /SLS RTR | G82884 | Pump, 6" X 4" PA High Head DSL Serial No.1565762 ID No. R81207 | \$6,269.40 |
| 1057420 | OXFORD MINING /SLS RTR | G84039 | Pump, 6" X 4" PA High Head DSL Serial No. 1511894N ID No. R78728 | \$5,820.00 |
| 1057420 | OXFORD MINING /SLS RTR | G84294 | Pump, 6" X 4" PA High Head DSL Serial No. 1565759 ID No. R81204 | \$3,280.00 |
| 1057420 | OXFORD MINING /SLS RTR | G84297 | Pump, 6" X 4" PA High Head DSL Serial No. 1511893N ID No. R78729 | \$4,740.00 |
| 1057420 | OXFORD MINING /SLS RTR | G86779 | Pump, 6" X 4" PA High Head DSL Serial No. 1627650 ID No. R83475 | \$2,182.50 |
| 1057420 | OXFORD MINING /SLS RTR | G87948 | Pump, 6" X 4" PA High Head DSL Serial No. 1565760 ID No. R81205 | \$1,830.00 |
| 1057420 | OXFORD MINING /SLS RTR | G88641 | Pump, 6" X 4" PA High Head DSL Serial No. 1511893N ID No. R78729 | \$7,626.21 |
| 1057420 | OXFORD MINING /SLS RTR | G88791 | Pump, 8" X 6" PA High Head DSL Serial No. 1504194 ID No. R78725 | \$5,009.93 |

| Ohio Machinery Co. Non-Continuing Agreements | | | | |
|---|---------------------------|----------------------|---|--|
| Customer No. | Customer Name | Agreement No. | Equipment Description | Discounted Rental Payments Due (as of Closing Date) |
| 1057420 | OXFORD MINING /SLS RTR | G89986 | Pump, 6" x 4" PA High Head DSL Serial No. 1565760 ID No. R81205 | \$9,480.00 |
| 1057420 | OXFORD MINING /SLS RTR | G90283 | Pump, 6" x 4" PA High Head DSL Serial No. 1627650 ID No. R83475 | \$5,820.00 |
| 1057420 | OXFORD MINING /SLS RTR | G91957 | Pump, 8" x 6" PA High Head DSL Serial No. 1504193 ID No. R78724 | \$00.00 |
| 1057420 | OXFORD MINING /SLS RTR | G93798 | Pump, 6" x 4" PA High Head DSL Serial No. 1672441 ID No. R84746 | \$5,820.00 |
| 1057420 | OXFORD MINING /SLS RTR | G93833 | Pump, 6" x 4" PA High Head DSL Serial No. 1672440 ID No. R84747 | \$1,830.00 |
| 1057420 | OXFORD MINING /SLS RTR | G94357 | Pump, 10" x 6" PA High Head DSL Serial No. 1514243 ID No. R78731 | \$5,160.00 |
| 1057420 | OXFORD MINING /SLS RTR | G94592 | Pump, 6" x 4" PA High Head DSL Serial No. 1627650 ID No. R83475 | \$5,820.00 |
| 1057420 | OXFORD MINING /SLS RTR | G95047 | Pump, 6" x 4" PA High Head DSL Serial No. 1672440 ID No. R84747 | \$1,830.00 |
| 1057420 | OXFORD MINING /SLS RTR | G95122 | 6"x4" PA Trash Pump Serial No. 1565762 ID No. R81207 | \$3,310.00 |
| 1057420 | OXFORD MINING /SLS RTR | G95369 | 6"x4" PA Trash Pump Serial No. 1672440 ID No. R84747 | \$3,660.00 |
| 1057420 | OXFORD MINING /SLS RTR | G95455 | 6"x4" PA Trash Pump Serial No. 1565759 ID No. R81204 | \$3,660.00 |

| Ohio Machinery Co. Non-Continuing Agreements | | | | |
|---|------------------------|----------------------|---|--|
| Customer No. | Customer Name | Agreement No. | Equipment Description | Discounted Rental Payments Due (as of Closing Date) |
| 1057420 | OXFORD MINING /SLS RTR | G95460 | 10"x6" PA Trash Pump Serial No. 1514243 ID No. R78731 | \$2,580.00 |
| 1057420 | OXFORD MINING /SLS RTR | G95696 | 10"x6" PA Trash Pump Serial No. 1514243 ID No. R78731 | \$600.00 |
| 1057420 | OXFORD MINING /SLS RTR | G93831 | Pump, 6" x 4" PA High Head DSL Serial No. 1511894N ID No. R78728 | \$3,660.00 |
| TOTAL | | | | \$119,671.38 |