

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

In re:

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

Chapter 11

Case No. 18-35672

(Jointly Administered)

**APPLICATION OF KOMATSU FINANCIAL LIMITED PARTNERSHIP  
FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIM**

Komatsu Financial Limited Partnership (“Komatsu”), by and through its undersigned counsel, files this Application for Allowance and Payment of Administrative Claim Pursuant to 11 U.S.C. §§ 365(d), 507(a)(2) and 503(b)(1) (this “Application”). In support of its Application, Komatsu respectfully represents as follows<sup>1</sup>:

**BACKGROUND**

**A. The Komatsu Leases**

1. Komatsu and debtor Texas Westmoreland Coal Co. (“TWCC”) entered into (a) that certain Equipment Lease dated April 26, 2010 (as amended, supplemented or otherwise modified from time to time, the “Equipment Lease”), (b) those certain Schedule Nos. 004, 005, 006, 007, 008, 009, 010, 011, 012 and 013 (collectively, the “Schedules”), pursuant to which TWCC is required to make certain monthly rental payments to Komatsu on account of its lease of certain equipment described in the Schedules, and (c) all other documents related thereto (the Equipment

---

<sup>1</sup> In addition, Komatsu expressly reserves the right to amend or supplement this Application.

Lease and Schedules are hereinafter collectively referred as the “Komatsu Leases”). Copies of the Komatsu Leases are annexed hereto as **Exhibit A**.

2. The leased equipment that is the subject of the Komatsu Leases is hereinafter collectively referred to as the “Leased Equipment”.

3. Pursuant to the Komatsu Leases, monthly payments must be made to Komatsu for its use of the Leased Equipment. The outstanding amount due to Komatsu from the Petition Date through April 12, 2019, is the total amount of \$339,080.29 (“Administrative Claim”). Komatsu’s Administrative Claim is broken down as follows:

| Schedule No. | Serial No. | Property Tax | Late Charges | Payments Past Due |             | Subtotal            |
|--------------|------------|--------------|--------------|-------------------|-------------|---------------------|
|              |            |              |              | March             | April       |                     |
| 004          | A40009     | \$34,035.16  | \$4,269.94   | \$0.00            | ---         | \$38,305.10         |
| 005          | A30001     | \$13,035.36  | \$1,506.24   | \$0.00            | ---         | \$14,541.60         |
| 006          | A40010     | \$34,035.16  | \$4,269.94   | \$0.00            | ---         | \$38,305.10         |
| 007          | A40011     | \$34,035.16  | \$5,434.46   | \$0.00            | ---         | \$39,469.62         |
| 008          | A40012     | \$34,035.15  | \$3,105.40   | \$0.00            | ---         | \$37,140.55         |
| 009          | A40013     | \$23,515.66  | \$1,940.89   | \$0.00            | ---         | \$25,456.55         |
| 010          | 60341      | \$19,108.35  | \$1,453.24   | \$0.00            | \$13,469.14 | \$34,030.73         |
| 011          | 60350      | \$19,108.35  | \$1,720.37   | \$0.00            | \$13,469.14 | \$34,297.86         |
| 012          | 60353      | \$19,108.35  | \$1,818.34   | \$0.00            | \$13,469.14 | \$34,395.83         |
| 013          | 60355      | \$27,849.85  | \$1,818.34   | \$0.02            | \$13,469.14 | \$43,137.35         |
|              |            |              |              |                   |             | <b>\$339,080.29</b> |

## **B. Procedural Background**

4. On October 9, 2018 (“Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter of the Bankruptcy Code.

5. Debtors continue to operate their businesses as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

6. Pursuant to the *Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates, (III) Approving the Forms of Ballots and Notices in Connection Therewith, and (IV) Scheduling Certain Dates with Respect Thereto* [Docket No. 841] (“Order”), the Court fixed a deadline of January 25, 2019 (“Initial Administrative Claims Bar Date”) for all requests for payment of administrative claims arising prior to January 4, 2019.

7. On March 2, 2019, the Court entered the *Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* [Docket No. 1561] (the “WLB Confirmation Order”) confirming the *Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (with all supplements and exhibits thereto, the “WLB Plan”) of the WLB Debtors (as defined therein), which Plan Effective Date (as defined therein) occurred on March 15, 2019.

8. The WLB Plan provides that claimants must submit requests for payment of Administrative Claims (as defined therein) by the Initial Administrative Claims Bar Date, which was January 25, 2019, and subsequently by the Supplemental Administrative Claims Bar Date, which is thirty (30) days after the Plan Effective Date.

9. Komatsu previously filed an *Application of Komatsu Financial Limited Partnership for Allowance and Payment of Administrative Claim* on January 24, 2019 [Docket No. 1138].

10. As of the date hereof, the outstanding amount due to Komatsu from the Petition Date through April 12, 2019, is the total amount of \$339,080.29.

**I. RELIEF REQUESTED**

11. By this Application, Komatsu requests entry of an Order allowing its Administrative Claim for payment obligations arising or accruing under the Komatsu Leases between the Petition Date through April 12, 2019, pursuant to 11 U.S.C. §§ 365(d), 507(a)(2) and 503(b)(1).

**II. BASIS FOR RELIEF REQUESTED**

12. Section 365(d)(5) of the Bankruptcy Code requires TWCC to timely perform all of its obligations under unexpired personal property leases (such as the Komatsu Leases) “arising from or after 60 days after the [Petition Date] . . . until such lease is assumed or rejected.” 11 U.S.C. §365(d)(5). Thus, in accordance with section 365(d)(5), TWCC must resume full performance under the Komatsu Leases and cure all defaults that occurred after sixty days from the Petition Date, December 10, 2018.

13. Despite the obligation to remain current on payments after December 10, 2018, TWCC has failed to pay Komatsu certainly monthly payments, taxes and late charges on the Komatsu Leases. Accordingly, certain post-petition amounts due and owing to Komatsu under the Komatsu Leases should be allowed as an administrative expense claim and immediately paid by TWCC pursuant to section 365(d)(3).

14. Moreover, section 503 of the Bankruptcy Code provides in pertinent part, that “[a]n entity may timely file a request for payment of an administrative expense.” 11 U.S.C. § 503(a). Section 503 further provides that, after notice and a hearing, there shall be allowed administrative expenses, including the “actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. §503(b)(1)(A). These costs and expenses are considered administrative expenses, entitled to priority under section 11 U.S.C. § 507(a)(2).

15. Here, Komatsu is entitled to an allowed administrative expense claim under sections 503(b) and 507(a) of the Bankruptcy Code for all post-petition amounts, as TWWC continues to utilize the Leased Equipment and the estate has benefited from the use thereof.

16. Accordingly, Komatsu is entitled to an administrative expense post-petition claim in the amount of \$339,080.29 for the unpaid post-petition payments, which should have been made by TWCC in the ordinary course of business.

**RESERVATION OF RIGHTS**

17. Komatsu hereby reserves the right to amend its Administrative Claim should additional information become available further reserves all of its rights, claims, defenses and remedies under the Bankruptcy Code and applicable law.

**WHEREFORE**, for all the reasons set forth herein, Komatsu respectfully requests that this Court enter an Order granting the allowance and payment of its administrative claim in the amount of \$339,080.29, and such other and further relief as this Court deems just and appropriate.

Dated: April 15, 2019  
Houston, Texas

**KANE RUSSELL COLEMAN LOGAN PC**

*/s/ Demetri J. Economou*

Michael P. Ridulfo  
Texas Bar No. 16902020  
S.D. Tex. No. 27086  
Demetri J. Economou  
Texas Bar. No. 24078461  
S.D. Tex. No. 1852182  
5051 Westheimer Road, 10th Floor  
Houston, Texas 77056  
Telephone: (713) 425-7400  
Facsimile: (713) 425-7700  
E-mail: mridulfo@krcl.com  
E-mail: deconomou@krcl.com

**ATTORNEYS FOR CREDITOR  
KOMATSU FINANCIAL LIMITED PARTNERSHIP**

**CERTIFICATE OF SERVICE**

On April 15, 2019, a copy of the foregoing document was served on all parties receiving electronic notification via the Court's CM/ECF system.

/s/ Demetri J. Economou  
Demetri J. Economou