

**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)**

**UNITED STATES' LIMITED PROTECTIVE OBJECTION TO THE
JOINT PLAN OF LIQUIDATION FOR THE WMLP DEBTORS
(Related to Doc. No. 1612)**

On October 9, 2018, the WLB Debtors and the WMLP Debtors each filed voluntary bankruptcy petitions. Both entities seek to liquidate their assets via auction and sale.

On March 15, 2019, a Joint Plan of Liquidation for the WMLP Debtors ("the Plan") (Docket No. 1612) was filed, which was supplemented on May 22, 2019 (Docket No. 1862). On May 23, 2019, WMLP and the WMLP Debtors filed a motion seeking, *inter alia*, approval of the sale of the Kemmerer Mine and related assets ("the Kemmerer Sale") (Docket No. 1863). Later on May 23, the WMLP and the WMLP Debtors filed a schedule of cure payments owed on leases and executory contracts that would be assumed and assigned as part of the Kemmerer Sale (Docket No. 1864), and which states that the United States Department of the Interior is owed a cure amount of \$1,400,034.50.

ARGUMENT

1. The United States of America (United States), on behalf of the United States Department of the Interior hereby files this limited protective objection to confirmation of the Plan.

2. The proposed Plan has as both a condition to confirmation and a condition to effectiveness that the sale of the Kemmerer mines in Wyoming (“the Kemmerer Sale”) shall have closed. Plan at 38. In theory, however, the Debtors and/or other interested parties might seek to waive that condition.

3. In the event that the condition is waived or sought to be waived, the United States objects to the Plan as being not feasible and forbidden by law. Under such circumstances, the Plan would fail to meet the requirements of 11 U.S.C. §§ 1129(a)(1), 1129(a)(3), and 1129(a)(11).

4. The proposed Plan assumes that the Kemmerer mines will be purchased and that the buyer will assume many significant reclamation and other liabilities that the WMLP (and WLB) Debtors would otherwise be responsible for.

5. If that were not to be the case, the Plan does not appear to provide for full compliance with such legal requirements and would be not feasible and would be forbidden by law in contravention of 11 U.S.C. §§ 1129(a)(1), 1129(a)(3), and 1129(a)(11).

6. “A bankruptcy petition is not a grant of immunity. Bankruptcy debtors are no different from any citizen in that they must comply with state and federal laws.” *In re American Coastal Energy Inc.*, 399 B.R. 805, 810 (Bankr. S.D. Tex. 2009). *See also In re H.L.S. Energy Co.*, 151 F.3d 434 (5th Cir. 1998); 28 U.S.C. § 959(b) (requiring compliance with applicable non-bankruptcy law in managing and operating property of the estate); *In re Cajun Electric Power Co-op, Inc.*, 150 F.3d 503, 519 (5th Cir. 1998) (Plan may not propose “independent illegality”).

7. Section 1129(a)(11) of the Code establishes what is commonly known as the “feasibility” requirement. The bankruptcy court cannot approve a plan unless it has at least

“a reasonable probability of success.” *In re T-H New Orleans Ltd. Partnership*, 116 F.3d 790, 801 (5th Cir. 1997). Without the Kemmerer Sale, the proposed Plan does not meet this requirement because it fails to provide for the compliance obligations for the Kemmerer mines.¹

8. At the time of this objection, the proposed Kemmerer Sale has not been approved, much less has it closed. Potential impediments to its approval and closing include the payment of outstanding cure payments on leases and executory contracts sought to be assumed and assigned. As reflected in the cure schedule filed on May 23, 2019, a cure amount of \$1,400,034.50 is owed to the United States Department of the Interior. Docket No. 1864 at 14.

Wherefore, the United States respectfully objects, protectively, to the Plan.

Dated: May 23, 2019

Respectfully submitted,

RYAN K. PATRICK,
United States Attorney

By: *s/ Richard A. Kincheloe*
Richard A. Kincheloe
Assistant United States Attorney
Attorney-in-Charge
United States Attorney's Office
Southern District of Texas
Texas Bar No. 24068107
S.D. Tex. ID No. 1132346
1000 Louisiana St., Suite 2300
Houston, Texas 77002
Telephone: (713) 567-9422
Facsimile: (713) 718-3033
Email:
Richard.Kincheloe@usdoj.gov

¹ The United States reserves the right to supplement this limited protective objection in the event that the Kemmerer sale does not close.

**Attorney for the United States of
America**

Certificate of Service

The undersigned certifies that he served the foregoing Objection on the parties receiving ECF notice in this case on May 23, 2019, through the Court's ECF notification system.

s/ Richard A. Kincheloe
Richard A. Kincheloe
Assistant United States Attorney