

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

	)		
In re:	)		Chapter 11
	)		
Westmoreland Coal Company, <i>et al.</i> , <sup>1</sup>	)		Case No. 18-35672 (DRJ)
	)		
Debtors.	)		Jointly Administrated
	)		
	)		

**STATE OF OHIO, OHIO ENVIRONMENTAL PROTECTION AGENCY’S LIMITED  
PROTECTIVE OBJECTION TO THE JOINT PLAN OF LIQUIDATION FOR THE  
WMLP DEBTORS (Related to Doc. 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”) (Doc. #1612) was filed, which was supplemented on May 22, 2019 (Doc. #1862). On February 1, 2019, the WMLP Debtors entered into the Oxford Asset Purchase Agreement (“Oxford APA”) (Doc. # 1252-2) with CCU Coal and Construction, LLC (“CCU Coal and Construction”).

Pursuant to the Oxford APA, the Oxford Coal mines in Ohio, and all Permits and Licenses held by the WMLP Debtors related to the mines, were transferred to CCU Coal. The Oxford APA provides that CCU Coal and Construction assumed all environmental compliance obligations

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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.

required by the transferred Permits and Licenses. This Court's February 5, 2019 Order approved the Oxford APA.

CCU Coal and Construction disputes that the Oxford APA requires it to assume all environmental compliance obligations required by the transferred Permits and Licenses. To resolve this dispute, the WMLP Debtors filed a Complaint for Declaratory Relief in Adv. Pro. No. 19-03354. The Complaint seeks a declaration that the environmental compliance obligations required by the WMLP Debtors' 404 Permits, 401 Water Quality Certifications, and Isolated Wetland Permits were transferred to CCU Coal and Construction.

### **ARGUMENT**

1. The State of Ohio, Ohio Environmental Protection Agency ("State") files this limited protective objection to confirmation of the Plan.

2. The WMLP Debtors' Plan assumes that the environmental compliance obligations required by the WMLP Debtors' 404 Permits, 401 Water Quality Certifications, and Isolated Wetland Permits were transferred to CCU Coal and Construction. Although settlement negotiations are ongoing, the transfer of the compliance obligations to CCU Coal and Construction is unresolved and is being litigated in Adv. Pro. No. 19-03354.

3. If the Court finds that some compliance obligations required by the Permits and Certifications are retained by the WMLP Debtors, the Plan does not appear to provide for full compliance with such obligations and would not be feasible and would be forbidden by law in contravention of 11 U.S.C. §§ 1129(a)(1), 1129(a)(3), and 1129(a)(11).

4. "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 (5<sup>th</sup> 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 (5<sup>th</sup> Cir. 1998) (Plan may not propose “Independent illegality”).

5. Section 1129(a)(11) of the Code establishes what is commonly known as the “feasibility” requirements. 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 (5<sup>th</sup> Cir. 1997). Without CCU Coal and Construction’s assumption of the environmental compliance obligations required by the WMLP Debtors’ 404 Permits, 401 Water Quality Certifications, and Isolated Wetland Permits, the proposed Plan does not meet the feasibility requirements because it fails to provide for all the environmental compliance obligations for the Oxford Coal mines. If CCU Coal and Construction is not liable for these environmental compliance obligations, the proposed Plan provides no provisions for compliance by the WMLP Debtors.<sup>2</sup>

6. At the time of this objection, the Court has not issued a ruling on the Complaint for Declaratory Relief. Until the Court issues its ruling, the Plan should not be confirmed.

Wherefore, the State respectfully objects, protectively, to the Plan.

Dated May 29, 2019.

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<sup>2</sup> The State reserves the right to supplement this limited protective objection in the event that any environmental compliance obligations related to the Oxford Coal mines are not assumed by CCU Coal and Construction.

Respectfully submitted,

**OFFICE OF THE OHIO  
ATTORNEY GENERAL  
DAVE YOST**

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**CERTIFICATE OF SERVICE**

I certify that on May 29, 2019, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Timothy J. Kern  
Timothy J. Kern  
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