

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)

**KOMATSU FINANCIAL LIMITED PARTNERSHIP'S OBJECTION TO
THE SCHEDULE OF CURE AMOUNTS [DOCKET NO. 1864]**

Komatsu Financial Limited Partnership ("Komatsu") hereby submits its objection and reservation of rights (this "Objection") to the *Schedule of Cure Amounts Related to Kemmerer Credit Bid Sale* [Docket No. 1864] (the "Cure Schedule") filed by Westmoreland Resource Partners, LP ("WMLP") and WMLP's direct and indirect subsidiaries (collectively with WMLP, the "WMLP Debtors"). In support of its Objection, Komatsu respectfully represents as follows¹:

BACKGROUND

A. The Komatsu Leases and the Komatsu Leased Equipment

1. Komatsu and debtor Westmoreland Kemmerer LLC ("Kemmerer") are parties to (a) that certain Advantage Lease! Master Equipment Lease dated February 10, 2014 (as amended, supplemented or otherwise modified from time to time, the "2014 Master Equipment Lease"), (b) that certain Advantage Lease! Schedule No. 000 to the 2014 Master Equipment Lease (as amended, restated, supplemented or otherwise modified, collectively referred to herein as "Schedule No. 000"), pursuant to which Kemmerer leases from Komatsu one (1) Komatsu 830E-1AC Electric

¹ Capitalized terms used herein and not otherwise defined have the same meaning ascribed to such terms in the Cure Schedule. In addition, Komatsu expressly reserves the right to amend or supplement this Objection.

Truck s/n A40916 (the “Schedule 000 Equipment”) and is required to make monthly rental and other payments to Komatsu as required by Schedule No. 000, (c) that certain Advantage Lease! Schedule No. 001 to the 2014 Master Equipment Lease (as amended, restated, supplemented or otherwise modified, collectively referred to herein as “Schedule No. 001”), pursuant to which Kemmerer leases from Komatsu one (1) Komatsu 830E-1AC Electric Truck s/n A40917 (the “Schedule 001 Equipment”) and is required to make monthly rental and other payments to Komatsu as required by Schedule No. 001, (d) that certain Advantage Lease! Schedule No. 002 to the 2014 Master Equipment Lease (as amended, restated, supplemented or otherwise modified, collectively referred to herein as “Schedule No. 002”), pursuant to which Kemmerer leases from Komatsu one (1) Komatsu 830E-1AC Electric Truck s/n A40918 (the “Schedule 002 Equipment”) and is required to make monthly rental and other payments to Komatsu as required by Schedule No. 002, (e) that certain Advantage Lease! Schedule No. 003 to the 2014 Master Equipment Lease (as amended, restated, supplemented or otherwise modified, collectively referred to herein as “Schedule No. 003”), pursuant to which Kemmerer leases from Komatsu one (1) Komatsu 830E-1AC Electric Truck s/n A40919 (the “Schedule 003 Equipment”) and is required to make monthly rental and other payments to Komatsu as required by Schedule No. 003, (f) that certain Master Equipment Lease dated April 15, 2013 (as amended, supplemented or otherwise modified from time to time, the “2013 Master Equipment Lease”), and (g) that certain Advantage Lease! Schedule No. 003 to the 2013 Master Equipment Lease (as amended, restated, supplemented or otherwise modified, collectively referred to herein as “Schedule No. 003-A”² and collectively with the 2014 Master Equipment Lease, Schedule No. 000, Schedule No. 001, Schedule No. 002, Schedule No.

² Komatsu and Kemmerer are also parties to that certain Lease Assignment Agreement (the “Schedule No. 003-A Lease Assignment”), pursuant to which Westmoreland Resources, Inc. transferred and its interest in Schedule No. 003-A to Kemmerer).

003, and the 2013 Master Equipment Lease, the “Komatsu Leases”), pursuant to which Kemmerer leases from Komatsu one (1) KOMATSU PC1250-8 Hydraulic Excavator s/n 30311 EQ 514204 (the “Schedule 003-A Equipment” and collectively with the Schedule 000 Equipment, the Schedule 001 Equipment, the Schedule 002 Equipment, and the Schedule 003 Equipment, the “Komatsu Leased Equipment”) and is required to make monthly rental and other payments to Komatsu as required by Schedule No. 003-A. Copies of the Komatsu Leases and the Lease Assignment are annexed hereto as **Exhibit A**.

2. Komatsu is the owner and lessor of the Komatsu Leased Equipment.

B. Procedural Background and Cure Amounts

3. On October 9, 2018 (“Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”) and initiated the above-captioned jointly administered bankruptcy cases (the “Bankruptcy Cases”).

4. On May 23, 2019, WMLP Debtors filed an *Expedited Motion of Westmoreland Resource Partners, LP and Its Subsidiaries for Entry of (I) Approving the Sale of the Kemmerer Mine and Certain Other Assets Free and Clear of Substantially All Liens, Claims, Encumbrances and Interests Pursuant to a Credit Bid from Secured Lenders, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith and (III) Granting Related Relief* [Docket No. 1863] (the “Sale Motion”), pursuant to which WMLP Debtors seek authorization to assume and assign certain executory contracts in connection with a sale of certain assets.

5. The Schedule, filed in connection with the Sale Motion, lists the following as executory contracts with Komatsu as a counter-party and to be assumed and assigned pursuant to and as part of the relief requested in the Sale Motion:

Westmoreland Kemmerer, LLC	KOMATSU FINANCIAL LIMITED PARTNERSHIP	Advantage Lease! Master Equipment Lease	\$0.00
Westmoreland Kemmerer, LLC	KOMATSU FINANCIAL LIMITED PARTNERSHIP	Advantage Lease! Schedule No. 000 and Addendum - Komatsu 830E-1AC Electric Truck (S/N A40916)	\$0.00
Westmoreland Kemmerer, LLC	KOMATSU FINANCIAL LIMITED PARTNERSHIP	Advantage Lease! Schedule No. 001 and Addendum - Komatsu 830E-1AC Electric Truck (S/N A40917)	\$0.00
Westmoreland Kemmerer, LLC	KOMATSU FINANCIAL LIMITED PARTNERSHIP	Advantage Lease! Schedule No. 002 and Addendum - Komatsu 830E-1AC Electric Truck (S/N A40918)	\$0.00
Westmoreland Kemmerer, LLC	KOMATSU FINANCIAL LIMITED PARTNERSHIP	Advantage Lease! Schedule No. 003 and Addendum - Komatsu 830E-1AC Electric Truck (S/N A40919)	\$0.00
Westmoreland Kemmerer, LLC	KOMATSU FINANCIAL LIMITED PARTNERSHIP	Advantage Lease! Schedule No. 003A and Addendum - KOMATSU PC1250-8 Hydraulic Excavator EQ 514204 (S/N 30311)	\$21,959.70
Westmoreland Resources, Inc. Westmoreland Kemmerer, LLC	KOMATSU FINANCIAL LIMITED PARTNERSHIP	Lease Assignment Agreement - PC1250-8 (S/N 30311)	\$0.00

6. The Schedule designates a Cure Amount of \$0.00 for Schedule No. 000, Schedule No. 001, Schedule No. 002, Schedule No. 003 and a Cure Amount of \$21,959.70 for Schedule No. 0003A (collectively, the “Proposed Cure Amounts”).

7. The Schedule fails to include the correct cure amount, late charges, and attorneys’ fees and costs that are currently due and owing to Komatsu under the Komatsu Leases.

8. Through May 23, 2019, the amount necessary to cure the defaults under the Komatsu Leases is no less than \$63,079.70, in addition to any amounts that may accrue after the filing of this Objection, including past due and accruing rental payments, late charges, taxes, and attorneys’ fees (collectively, the “Actual Cure Amount”). The Actual Cure Amount includes the following amounts:

Schedule No.	Serial No.	Late Charges	May 2019 Rentals	Subtotal
000	A40916	\$0.00	\$0.00	\$0.00
001	A40917	\$0.00	\$0.00	\$0.00
002	A40918	\$0.00	\$0.00	\$0.00
003	A40919	\$0.00	\$0.00	\$0.00
003-A	30311	\$40.00	\$21,924.70	\$21,964.70
Attorneys’ Fees and Costs Through May 23, 2019:				\$41,115.00
				\$63,079.70

9. The Actual Cure Amount must be paid to Komatsu in order to cure the existing defaults under the Komatsu Leases and for the assumption and assignment of the Komatsu Leases pursuant to Section 365(b)(1)(A) of the Bankruptcy Code.

OBJECTION

10. The Proposed Cure Amounts do not meet the requirements of Section 365(b)(1)(A) of the Bankruptcy Code.

11. In order for Kemmerer to assume and assign the Komatsu Leases pursuant to Bankruptcy Code Section 365, all monetary defaults thereunder must be cured, including paying Komatsu in full the Actual Cure Amount. Without limiting the foregoing, to the extent that Komatsu is forced to incur further fees and expenses in defending its right to receive the Actual Cure Amount, such amounts also must be paid under the terms, and for the assumption and assignment, of the Komatsu Leases.

12. Additionally, pursuant to Section 365(d)(5) of the Bankruptcy Code, Kemmerer is required to timely performing all of its obligations under 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). The 60 day period under Section 365(d)(5) expired on Monday, December 10, 2018. Moreover, section 503 of the Bankruptcy Code entitles Komatsu to be reimbursed as an administrative expense for the “actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. §503(b)(1)(A). As such, Komatsu is entitled to an administrative claim for all amounts due and owing to Komatsu under the Komatsu Leases pursuant to Sections 365 and 503 of the Bankruptcy Code.

RESERVATION OF RIGHTS

13. Komatsu reserves all rights to file additional pleadings and further objections as may be appropriate with respect to the Komatsu Leases and the Komatsu Leased Equipment, including, but not limited to, objections to any plan of reorganization filed by any of the Debtors and applications regarding the allowance of administrative claims pursuant to Bankruptcy Code Sections 365 and 503.

WHEREFORE, Komatsu respectfully requests that this Court (i) sustain this Objection; (ii) affirmatively require Kemmerer and/or any party to which Kemmerer seeks to assume and assign the Komatsu Leases to pay the Actual Cure Amount and any additional amounts due to Komatsu as a condition to assumption and assignment of the Komatsu Leases; and (iii) grant Komatsu such other and further relief as the Court deems just and equitable under the circumstances.

Dated: May 30, 2019
Houston, Texas

KANE RUSSELL COLEMAN LOGAN PC

/s/ Demetri J. Economou
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**ATTORNEYS FOR CREDITOR
KOMATSU FINANCIAL LIMITED PARTNERSHIP**

CERTIFICATE OF SERVICE

On May 30, 2019, a copy of the foregoing document was served on all parties receiving electronic notification via the Court's CM/ECF system.

Additionally, on May 30, 2019, a copy of the foregoing document was served by mail on all parties to receive service pursuant to the Notice of Auction and Sale Hearing for the Sale of the Kemmerer Assets.

/s/ Demetri J. Economou
Demetri J. Economou