

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

IN RE: ) Chapter 11  
)  
WESTMORELAND COAL COMPANY, *et al.*,<sup>1</sup> ) Case No. 18-35672 (DRJ)  
DEBTORS. )  
) (Jointly Administered)  
)  
)

LIMITED OBJECTION AND RESERVATION OF RIGHTS OF ZURICH AMERICAN  
INSURANCE COMPANY AND AFFILIATE TO EXPEDITED MOTION OF  
WESTMORELAND RESOURCE PARTNERS, LP AND ITS SUBSIDIARIES FOR  
ENTRY OF AN ORDER APPROVING THE SALE OF THE KEMMERER MINE,  
CERTAIN OTHER ASSETS AND RELATED RELIEF  
(Relates to Dkt. No. 1863)

TO: THE HONORABLE DAVID R. JONES,  
UNITED STATES BANKRUPTCY JUDGE

Zurich American Insurance Company, and its affiliate, Fidelity and Deposit Company of Maryland, (collectively, “Zurich”) file this *Limited Objection and Reservation of Rights of Zurich American Insurance Company and Affiliate To Expedited Motion of Westmoreland Resource Partners, LP and its Subsidiaries For Entry of An Order Approving the Sale of the Kemmerer Mine, Certain Other Assets and Related Relief* (“Sale Objection”) and respectfully state as follows:

1. On May 23, 2019, Debtor Westmoreland Resource Partners, LP and its Subsidiaries (collectively “WMLP”) filed their *Expedited Motion of Westmoreland Resource Partners, LP and its Subsidiaries For Entry of An Order (i) Approving the Sale of the Kemmerer*

<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 listed. A complete list of such information may be obtained on the website of the claims and noticing agent in these chapter 11 cases at [www.donlinrecano.com/westmoreland](http://www.donlinrecano.com/westmoreland).

*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* (the “**Second Kemmerer Sale Motion**”)[Dkt No. 1863]. Hearing on the Second Kemmerer Sale Motion is set for June 5, 2019 at 1:00 pm CT. [Dkt No. 1846].

2. On May 24, 2019, Zurich filed its *Objection and Reservation of Rights of Zurich American Insurance Company and Affiliate to Joint Plan of Liquidation of WMLP Debtors* (the “**Zurich Plan Objection**”). [Dkt No. 1877]<sup>2</sup>.

3. Zurich adopts the arguments and authorities set forth in its Zurich Plan Objection as its Sale Objection. Zurich has no objection to the Kemmerer Sale, generally, but any relief granted must be consistent with the rights of Zurich and the other Sureties granted by previous orders of this Court, the relevant Surety documents and applicable law. Moreover, and by way of further objection, Zurich asserts the following:

- (b) The proposed Credit Bid APA and proposed Sale Order fail to adequately protect and preserve the rights Zurich’s afforded to Zurich under the Zurich Bonds, the Zurich GAI’s, and the Zurich Collateral.
- (c) The proposed sale order fails to require the Credit Bid Purchaser to provide interim indemnity to Zurich to protect Zurich’s rights under its Existing Bonds and GAIs for the period of time after the Credit Bid Purchaser closed on the Sale Transaction but prior to the transfer of the mining permits.
- (d) The proposed sale order fails to require the Credit Bid Purchaser to properly address the transition issues of replacement surety bonds. Although the Credit Bid APA requires replacement bonding, the transition of the Zurich Bonds to the replacement surety bonds requires additional language, which Zurich and the other Sureties have discussed with WMLP and the Credit Bid Purchaser and will continue to try to resolve.

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<sup>2</sup> Unless otherwise stated herein, all capitalized terms shall have the meaning ascribed to them in the Zurich Plan Objection.

4. Reservation of Rights. Zurich reserves the right to assert additional objections to the Kemmerer Sale Motion.

WHEREFORE, Zurich prays that the Court deny the relief granted in the Second Kemmerer Sale motion unless and until the objections of Zurich are adequately addressed and the Court grant such other and further relief to which Zurich may be justly entitled.

Respectfully submitted,

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*ATTORNEYS FOR ZURICH AMERICAN  
INSURANCE COMPANY AND FIDELITY AND  
DEPOSIT COMPANY OF MARYLAND*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Objection was served via CM/ECF for the United States Bankruptcy Court for the Southern District of Texas to all parties entitled to such notice, and also on the parties listed below, on this the 31st day of May, 2019.

/s/ Duane J. Brescia  
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