

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

In re:

WESTMORELAND COAL COMPANY, *et al.*,
Debtors¹.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

**LIMITED OBJECTION AND RESERVATION OF
RIGHTS OF WHEELER MACHINERY CO.**

Wheeler Machinery Co. (“**Wheeler**”), by and through its undersigned counsel, files the following limited objection and reservation of rights (the “**Limited Objection**”) in accordance with the *Schedule of Cure Amounts Related to Kemmerer Credit Bid Sale* [Dkt. No. 1864] (the “**Notice**”) filed by the above captioned debtors and debtors-in-possession (collectively, the “**Debtors**”). In support thereof, Wheeler respectfully state as follows:

1. On October 9, 2018, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being administered jointly.

¹ 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. Westmoreland Coal Company’s service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

2. The Notice provides a list of executory contracts and/or unexpired leases that the Debtors “may” assume and/or assign (the “**Assumed Contracts**”). Wheeler does not object to the assumption and/or assignment of any of the Assumed Contracts; however, it does disagree with the amounts proposed in the Notice as sufficient to cure any and all defaults thereunder.

3. Attached hereto as **Exhibit A** is a list of rental agreements (the “**Rental Agreements**”) included in the Notice for which rental payments are due and owing as of May 30, 2019 in the aggregate amount of \$64,270.93. Any and all such outstanding rental payments should be included and paid as part of any cure. A copy of the invoices related thereto have already been provided to the Debtors and are available upon written request to the undersigned attorney.

4. Not included on the Notice is an agreement between the parties dated April 22, 2019 whereby Wheeler will perform certain work on a Caterpillar 6060FS Front Shovel (the “**6060 Outage Agreement**”) in use by the Debtors. A copy of the 6060 Outage Agreement has already been provided to the Debtors and is available upon written request to the undersigned attorney.

5. Wheeler asserts this limited objection to the Notice to the extent the Debtors propose to assume and/or assign any of the Assumed Contracts, including but not limited to the Rental Agreements, and/or the 6060 Outage Agreement without curing any and all defaults thereunder in accordance with the requirements of section 365 of the Bankruptcy Code.

RESERVATION OF RIGHTS

6. Wheeler hereby reserves its rights to change and/or amend the amounts asserted herein should additional information become available warranting such action. Wheeler further

reserves all of its rights, claims, defenses, and remedies under the Bankruptcy Code and other applicable law with respect to the same.

7. Furthermore, nothing in this Limited Objection is intended to be, or should be construed as, a waiver by Wheeler of any of its rights under the Assumed Contracts, the Rental Agreements, the 6060 Outage Agreement and/or any other applicable contract, lease and/or rental agreement, the Bankruptcy Code, or applicable law.

WHEREFORE, based upon the foregoing and for good cause shown, Wheeler respectfully requests that the Court sustain this Limited Objection and grant such other and further relief as the Court may deem just and proper.

Dated: June 3, 2019

Respectfully submitted,

/s/ Cullen D. Speckhart

Cullen D. Speckhart (TX Bar No. 2158405)

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2019, the foregoing *Limited Objection and Reservation of Rights of Wheeler Machinery Co.* was served on all parties receiving electronic notification via the Court's CM/ECF system.

Further, I certify that a copy of the foregoing document will be served on June 4, 2019 on all parties listed in the notice dated May 22, 2019 and received from counsel to the WMLP Debtors.

/s/ Cullen D. Speckhart

Cullen D. Speckhart, Esq.

EXHIBIT A

Wheeler Machinery Co. Rental Agreement Summary					
Customer No.	Customer name	Agreement No.	Doc. Date	Equipment	Rental Payments Due (as of 5/13/2019)
73377	Westmoreland Kemmerer Inc.	C62001	6/18/2018	Wheel Loader 908 ID No. AA006296 Serial No. 0H8802430	\$ 2,407.55
73377	Westmoreland Kemmerer Inc.	814780	10/1/2018	Generator - 45KVA Mutliquip ID No. EC4200 Serial No. 7252393	\$ 945.00
73377	Westmoreland Kemmerer Inc.	814779	10/1/2018	Generator - 45KVA Mutliquip ID No. EC4198 Serial No. 7252391	\$ 945.00
73377	Westmoreland Kemmerer Inc.	C62003	10/10/2018	Wheel Tractor Scraper ID No. RRT00306 Serial No. 0DFJ00444	\$ 31,893.75
73377	Westmoreland Kemmerer Inc.	C62004	10/10/2018	18MS Motor Grader ID No. RRT00307 Serial No. 0N9A00236	\$ 26,880.00
73377	Westmoreland Kemmerer Inc.	814963	1/7/2019	70 KVA Genset ID No. EC4204 Serial No. 7354595	\$ 1,199.63
TOTAL					\$ 64,270.93