

United States Courts  
Southern District of Texas  
FILED

JUN 04 2019

David J. Bradley, Clerk of Court

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

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In re:

Westmoreland Coal Company, et al.,  
Debtor.

Chapter 11

Bankruptcy Case No. 18-35672 (DRJ)  
(Jointly Administered)

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**KILGORE COMPANIES, LLC RESPONSE TO WMLP DEBTORS' OBJECTION  
TO PROOF OF CLAIM NO. 11-2 FILED IN CASE NO. 18-35672**

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Kilgore Companies, LLC dba LeGrand Johnson Construction Co. ("Kilgore") hereby responds to the WMLP Debtor's Objection to Proof of Claim No. 11-2 Filed in Case No. 18-35672.

**RELIEF REQUESTED**

1. Kilgore requests that the objection be overruled and that the Kilgore claim be treated as a secured claim against Westmoreland Kemmerer, LLC (Case No. 18-35696) and Westmoreland Fee Coal Holdings, LLC (Case No. 18-35695) to the extent that there are proceeds available from the property to pay the secured claims, with the balance of the claim, if any, to be treated as an unsecured claim.

**FACTS**

2. In June of 2018, Westmoreland Kemmerer, LLC engaged Kilgore to complete an "access road project," which included, among other things, chip sealing the access road to the

Kemmerer mine. (Declaration of Lori Wadsworth, attached hereto as Exhibit A (“Wadsworth Declaration”), para. 2).

3. Beginning in late August, 2018, Kilgore performed the access road project. (Wadsworth Declaration, para. 4).

4. On approximately September 18, 2018, Colton Sandall, Kilgore’s contact person at the mine, contacted Kilgore and requested that Kilgore invoice the job immediately, because of the possibility of an impending bankruptcy filing. When told that the job was not finished because Kilgore had not completed the striping of the access road, Colton Sandall directed Kilgore to bill for the striping at “plan quantity,” and Westmoreland would pay for it. (Wadsworth Declaration, para. 4-5).

5. Consistent with Mr. Sandall’s direction, Kilgore sent an invoice on approximately September 18, 2018, which included the charges for striping the access road. (Wadsworth Declaration, para. 6-7).

6. Kilgore, through its subcontractor, American Pavement Marking, LLC, completed the access road project on September 20, 2019, when it completed striping the access road. (Wadsworth Declaration, paras. 3, 8, 9).

7. On October 9, 2018, Westmoreland Coal Co. and its subsidiaries, including Westmoreland Kemmerer, LLC and Westmoreland Kemmerer Fee Coal Holdings, LLC filed bankruptcy. The matter is proceeding in the above-captioned jointly-administered case.

8. On October 22, 2018, Kilgore filed Proof of Claim No. 11-1 asserting its claim for the unpaid invoice amount of \$522,854.06. (See Claim No. 11-1).

9. On January 18, 2019, Kilgore delivered a Preliminary Notice of Lien and a Notice of Intention to File Lien to the Debtors Westmoreland Kemmerer, LLC and Westmoreland Kemmerer Fee Coal Holdings, LLC. Neither the sufficiency nor the content of these notices is at issue here. (*See* WMLP Debtors' Objection, para. 14).

10. On February 11, 2019, Kilgore filed its Lien Statement in Lincoln County, Wyoming.

11. On March 6, 2019, Kilgore filed an amended proof of claim asserting a secured claim against Westmoreland Kemmerer, LLC and Westmoreland Kemmerer Fee Coal Holdings, LLC in the amount of \$522,854.06.

### **RESPONSE TO OBJECTION**

12. Kilgore submits that the secured claim was properly filed and amended, and that the secured claim should be allowed in the full amount.

**A. Determination that there are not proceeds to pay the Kilgore mechanic's lien is premature.**

13. The WMLP Debtor's properly cite Wyoming Statutes § 29-1-402 (c) for the proposition that a mechanic's lien does not have priority over a prior perfected security interest. Kilgore does not question that proposition but submits that a determination that there are not proceeds to pay the secured claim is not appropriate at this stage of the proceedings. The WMLP Debtors should wait until a sale is approved or a plan adopted, at which point the parties could properly assess whether the debtors' property is sufficient to pay the secured claim. At that

point, recharacterizing the unpaid balance of the secured claim as unsecured may be appropriate, but that conclusion cannot be made at this time and in the context of this claim objection.

**B. Kilgore's Lien Statement was properly recorded within 150 days of the last day work was performed or substantial completion of the project.**

14. The WMLP Debtors accurately cite Wyoming's requirement that a mechanics lien be filed within 150 days after the "last day when work was performed or materials furnished under contract."<sup>1</sup> In this case, however, Kilgore complied. As set forth in the declaration of Lisa Wadsworth, a material part of the job was striping the access road, and that work was not completed until Kilgore's subcontractor performed the work on September 20, 2018. Measured from that date, the 150-day period did not run until February 17, 2019, six days after Kilgore recorded its Lien Statement. The Lien Statement was timely filed, and the mechanics lien must be treated as a valid, perfected security interest as a matter of law.

**C. Kilgore's Amended Proof of Claim substantially complies with the Bar Date Order.**

15. In the Objection, the WMLP Debtors urge the Court to disallow the Proof of Claim because it did not identify the case numbers for Westmoreland Kemmerer, LLC and Westmoreland Kemmerer Fee Coal Holdings, LLC. Kilgore submits that the Amended Proof of Claim substantially complied with the Bar Date Order. At a minimum, the WMLP Debtors counsel clearly understood to which debtors the Proof of Claim applied. Kilgore submits that the

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<sup>1</sup> Alternatively, the Lien Statement must be filed within 150 days after "the date of substantial completion of the project on which work was performed. . . ." Wyoming Statutes § 29-2-106 (a)(i)(B).

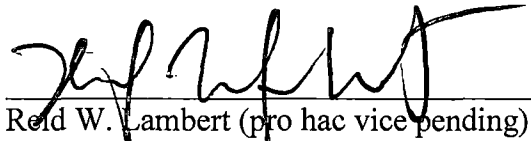
purpose of the Bar Date Order was, in part, to facilitate the claims review process, and the Kilgore Amended Proof of Claim has sufficiently served that purpose.

16. To the extent that further clarification is necessary, Kilgore is willing to submit a second amended Proof of Claim which would be functionally identical to the Amended Proof of Claim, but include the omitted case numbers.

**CONCLUSION**

17. For all of the reasons set forth above, Kilgore requests that the Court deny the objection and allow the secured claim as set forth in the Amended Proof of Claim.

DATED June 3, 2019.



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Counsel for Claimant Kilgore Companies,  
LLC, dba LeGrand Johnson Construction

**CERTIFICATE OF SERVICE—BY MAIL, OTHER**

I further certify that on June 3, 2019, I caused the **KILGORE COMPANIES, LLC RESPONSE TO WMLP DEBTORS' OBJECTION TO PROOF OF CLAIM NO. 11-2 FILED IN CASE NO. 18-35672** to be sent by first class United States mail, postage fully prepaid or by email, to the following at the addresses set forth below:

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\_\_\_\_\_/s/\_\_\_\_\_  
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