

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

In re:

WESTMORELAND COAL COMPANY, *et al.*,  
Debtors<sup>1</sup>.

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**”) to *Notice of Occurrence of Closing of the Sale of the Kemmerer Mine and Certain Other Assets* [Dkt. No. 2067] (the “**Notice**”) filed by the above captioned debtors and debtors-in-possession (collectively, the “**Debtors**”). In support thereof, Wheeler respectfully states 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.

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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.

2. On May 23, 2019, the Debtors filed the *Schedule of Cure Amounts Related to Kemmerer Credit Bid Sale* [Dkt. No. 1864], in response to which Wheeler filed the *Limited Objection and Reservation of Rights of Wheeler Machinery Co.* [Dkt. No. 1945].

3. The Notice provides a list of executory contracts and/or unexpired leases that the Debtors “may” assume and/or assign (the “**Assumed Contracts**”). The Notice also states that the Closing of the Credit Bid APA (as defined in the order of this Court entered on June 5, 2019, docket number 1966) occurred as of June 21, 2019 (the “**Closing Date**”). 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.

4. As of the Closing Date, \$47,040.00 was past due under Rental Agreement No. C62004, which amount has yet to be paid. Other amounts are due and owing under the Assumed Contracts, however, were not past due as of the Closing Date.

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 Rental Agreement No. C62004, 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, Rental Agreement No. C62004 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: July 1, 2019

Respectfully submitted,

/s/ Cullen D. Speckhart  
Cullen D. Speckhart (TX Bar No. 2158405)  
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*Counsel to Wheeler Machinery Co.*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 1, 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.

/s/ Cullen D. Speckhart  
Cullen D. Speckhart, Esq.