

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:)	Chapter 11
WESTMORELAND COAL COMPANY, <i>et al.</i> , ¹)	Case No. 18-35672 (DRJ)
Debtors.)	(Jointly Administered)

AGREED ORDER AND STIPULATION BETWEEN THE WMLP LIQUIDATION TRUST AND OHIO MACHINERY CO.

This stipulation and agreed order (this "Stipulation")² is made this 31st day of July, 2019, by the WMLP Liquidation Trust and Ohio Machinery Co. d/b/a Ohio CAT ("Ohio CAT" and together with the WMLP Liquidation Trust, the "Parties").

Recitals

WHEREAS, on October 9, 2018, each of the WMLP Debtors³ filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code;

WHEREAS, on November 15, 2018, the Court entered its *Final Order (I) Authorizing the Payment of Specified Trade Claims and (II) Confirming Administrative Expense Priority of*

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 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the WMLP Plan or the Settlement Order (as defined below), as applicable.

³ "WMLP Debtors" means, collectively, Debtors Westmoreland Resources GP, LLC, Westmoreland Resource Partners, LP, Westmoreland Kemmerer, LLC, Oxford Mining Company, LLC, Harrison Resources, LLC, Oxford Mining Company-Kentucky, LLC, Daron Coal Company, LLC, Oxford Conesville, LLC, and Westmoreland Kemmerer Fee Coal Holdings, LLC.

Outstanding Orders (the “Trade Order”) [Docket No. 512] authorizing the Westmoreland Coal Company (the “Company”) and the Company’s debtor subsidiaries (collectively, the “Debtors”) on a final basis, under certain conditions, to pay the prepetition claims of certain vendors, subject to the terms and conditions set forth therein;

WHEREAS, on December 12, 2018, Ohio CAT filed proof of claim 834 (ECF No. 335) against Buckingham Coal Company, LLC, a WLB Debtor⁴ entity, asserting an unsecured claim of \$33,234.85, of which \$23,461.32 was asserted as an administrative claim (“Claim No. 834”);

WHEREAS, on December 12, 2018, Ohio CAT filed proof of claim number 836 (ECF No. 337) against Oxford Mining Company, LLC (“Oxford”), a WMLP Debtor entity, asserting an unsecured claim of \$1,857,652.95, of which \$447,420.22 was asserted as an administrative claim (“Claim No. 836”);

WHEREAS, Ohio CAT executed that certain trade agreement with an effective date of January 2, 2019 (the “Trade Agreement”), between Ohio CAT and the Debtors regarding the allowance and treatment of certain claims of Ohio CAT against the Debtors (a) pursuant to section 503(b)(9) of the Bankruptcy Code and (b) as prepetition general unsecured claims;

WHEREAS, on February 5, 2019, the Court entered the *Order Approving Joint Expedited Motion of the WLB Debtors and the WMLP Debtors for Entry of an Order (I) Approving the Sale of (A) Substantially all of the Assets of Oxford Mining Company, LLC, and Certain of its*

⁴ “WLB Debtors” means Debtors Westmoreland Coal Company, Absaloka Coal, LLC, Basin Resources, Inc., Buckingham Coal Company, LLC, Dakota Westmoreland Corporation, Haystack Coal Company, San Juan Coal Company, San Juan Transportation Company, Texas Westmoreland Coal Company, WCC Land Holding Company, Inc., WEI-Roanoke Valley, Inc., Western Energy Company, Westmoreland Coal Company Asset Corp., Westmoreland Coal Sales Company, Inc., Westmoreland Energy Services New York, Inc., Westmoreland Energy Services, Inc., Westmoreland Energy, LLC, Westmoreland Mining LLC, Westmoreland North Carolina Power LLC, Westmoreland Partners, Westmoreland Power, Inc., Westmoreland Resources Inc., Westmoreland San Juan Holdings, Inc., Westmoreland San Juan, LLC, Westmoreland Savage Corporation, Westmoreland Texas Jewett Coal Company, Westmoreland-Roanoke Valley, LP, and WRI Partners, Inc., and for the avoidance of doubt, does not include any of the WMLP Debtors.

Subsidiaries, and (B) the Buckingham Mine, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith and (III) Granting Related Relief, Including Approval of the Related Sale Process [Docket No. 1289] (the “Oxford/Buckingham Sale Order”), whereby CCU Coal and Construction, LLC (“CCU”) purchased the Buckingham Mine and Oxford Assets, as defined in the Oxford/Buckingham Sale Order;

WHEREAS, on April 10, 2019, the Court entered the *Stipulation and Agreed Order Resolving Limited Objection and Reservation of Rights of Ohio Machinery Co. and OMCO Leasing Corporation Regarding Assumption and Assignment of Contracts and Related Cure Amounts* [Docket No. 1703] (the “Cure Stipulation”), which, among other matters, granted Ohio CAT an allowed pre-petition unsecured claims against the WMLP Debtors in the amount of \$44,711.44 (the “Cure Claim”);

WHEREAS, on June 4, 2019, the WMLP Debtors filed the *Amended Joint Chapter 11 Plan for the WMLP Debtors, as Modified* [Docket No. 1958] (as amended, the “WMLP Plan”);

WHEREAS, on June 5, 2019, the Court entered the *Order Approving Disclosure Statement and Confirming Amended Joint Plan of Liquidation for the WMLP Debtors, as Modified* [Docket No. 1967], and on June 21, 2019 the effective date of the WMLP Plan occurred [Docket No. 2068];

WHEREAS, on June 5, 2019, the Court entered the *Order Authorizing and Approving the New WMLP Committee Settlement* [Docket No. 1978] (the “Settlement Order”) approving the New Committee Settlement (as defined in the Settlement Order) consistent with the Term Sheet (as defined in the Settlement Order) attached as Exhibit 1 thereto;

WHEREAS, pursuant to the Settlement Order and the Term Sheet, subject to the occurrence of the Settlement Effective Date and in accordance with the Credit Bid APA, up to

\$4,533,000 of the Wind-Down Amount shall be used to pay, *inter alia*, certain accrued and unpaid allowed claims of lienholders that are party to post-petition vendor agreements or hold liens that would otherwise prime the liens of the MLP Secured Parties;

WHEREAS, the Term Sheet further provides that, “[s]ubject to the occurrence of the Settlement Effective Date, any allowed Plan Confirmation Claims shall be paid in accordance with the WMLP Plan and the Credit Bid APA; provided that in the event that the WMLP Plan has not been consummated as of the Kemmerer Closing Date, then . . . (a) allowed unpaid and undisputed Vendor Agreement Claimants. . . shall be paid on or as soon as reasonably practicable after the Kemmerer Closing Date[;]”

WHEREAS, on June 5, 2019, the Court entered the *Order (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 Certain Executory Contracts and Unexpired Leases and (III) Granting Related Relief* [Docket No. 1966], and the sale of the Kemmerer Assets and certain other assets to Kemmerer Operations, LLC closed on June 21, 2019 [Docket No. 2067];

WHEREAS, on July 21, 2019, Ohio CAT filed its *Application of Ohio Machinery Co. for Allowance and Payment of Administrative Claims and Reservation of Rights* [Docket No. 2154] (the “Administrative Claim Motion”), requesting an administrative claim in the amount of \$196,606.46 for goods and services provided post-Petition Date with respect to Oxford and/or the WMLP Debtors (the “Oxford Claim”) and payment of the 503(b)(9) portions of Claim No. 834 and Claim No. 836 (the “503(b)(9) Claims”); and

WHEREAS, the Parties wish to settle Claim No. 836 and certain other disputes among the Parties.

Stipulation

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, AND UPON APPROVAL BY THE COURT OF THIS STIPULATION, IT IS SO ORDERED AS FOLLOWS:

1. In accordance with the foregoing, the Parties agree that Ohio CAT holds the following Claims against Oxford, a WMLP Debtor entity, which shall both be allowed and paid as set forth herein: (a) a claim under 503(b)(9) of the Bankruptcy Code, allowed in the amount of \$216,186.00 (the "Allowed 503(b)(9) Claim"); (b) a Vendor Agreement Claim, allowed in the amount of \$977,264.43 (the "Allowed Vendor Claim," together with the Allowed 503(b)(9) Claim, the "Allowed Administrative Claims").

2. In accordance with the foregoing, and subject to the terms of this Stipulation and the approval thereof by the Court, the WMLP Liquidation Trust agrees to transfer to Ohio CAT cash in the amount of \$1,193,450.43 in full and final payment of the Allowed Administrative Claims (the "Allowed Administrative Claims Payment"), which Allowed Administrative Claims Payment shall be made on or before August 2, 2019.

3. In addition, and in accordance with the foregoing, the Parties agree that Ohio CAT holds the following claims against Oxford, a WMLP Debtor entity, which shall be allowed and treated as general unsecured claims under the WMLP Plan: (a) a disputed claim asserted under section 503(b)(9) of the Bankruptcy Code in the amount of \$275,362.91 (the "Disputed 503(b)(9) Claim"); and (b) a claim in the amount of \$289,027.55, or \$244,316.11 plus the Cure Claim (the "Other Claim," together with the Disputed 503(b)(9) Claim, the "Allowed Unsecured Claims").

4. The WMLP Liquidation Trust and Ohio CAT agree that the Allowed Unsecured Claims shall be, and hereby are, allowed as general unsecured claims under the WMLP Plan.

5. Upon Ohio CAT's receipt of the Allowed Administrative Claims Payment, and with the exception of Claim No. 834, for which the WMLP Debtors are not liable as such Claim relates to the WLB Debtors, Ohio CAT shall hold no claim, including any post-petition, administrative claim arising under title 11 of the United States Code, including, but not limited to, 11 U.S.C. §§ 503 or 507, against any WMLP Debtor other than the Allowed General Unsecured Claims allowed pursuant to this Stipulation, and any Proof of Claim filed by Ohio CAT and/or any agreement between Ohio CAT and any of the WMLP Debtors shall be deemed modified accordingly to reflect the agreement and relief in this Stipulation.

6. For the avoidance of doubt, the parties agree that this Stipulation fully addresses all claims against the WMLP Debtors asserted in the Administrative Claim Motion. Further, Ohio CAT agrees that it holds no claim against the WMLP Debtors or the WMLP Liquidation Trust with respect to the Oxford Claim asserted in the Administrative Claim Motion. Ohio CAT agrees that any amounts due and owing with respect to the Oxford Claim are the sole responsibility of CCU and that neither the WMLP Debtor nor the WMLP Liquidation Trust are liable for the amounts asserted in the Oxford Claim.

7. Except as otherwise expressly set forth herein, nothing in this Stipulation is intended, or shall be construed, to modify the terms of any order entered in these chapter 11 cases or to alter the respective rights and obligations of the parties thereunder, which shall remain in full force and effect.

8. Each Party represents that it possesses full power and authority to execute, deliver, and perform its respective obligations under this Stipulation, and that each person executing this Stipulation on its behalf is duly authorized to execute and deliver this Stipulation.

9. Except for any rights or obligations created or reserved by this Stipulation, Ohio CAT, on behalf of itself and its assigns, predecessors, successors, agents, representatives, and professionals (the "Ohio CAT Releasing Parties"), hereby releases and discharges the WMLP Debtors, their estates, and the WMLP Liquidation Trust, together with each of the foregoing's respective assigns, successors, agents, affiliates, managers, members, principals, officers, directors, employees, representatives, trustees, and professionals, from any and all claims, interests, liens, obligations, liabilities, demands, losses, expenses, damages, debts, dues, accounts, fees, costs, interests, covenants, controversies, agreements, promises, and causes of action and/or suits, of every kind or nature *in personam* and/or *in rem*, including, but not limited to any derivative claims, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or noncontingent, existing or hereafter arising, in law, at equity or otherwise, which Ohio CAT Releasing Parties may now have, may have had at any time heretofore, or may have at any time hereafter, arising from, resulting from, or in any manner incidental to any and every matter, thing, or event, no matter what, occurring, or failing to occur, at any time in the past up to and including the date hereof, with respect to the WMLP Debtors, the provision of any goods by Ohio CAT to the WMLP Debtors, Chapter 11 Cases, and/or WMLP Liquidation Trust. For the avoidance of doubt, Ohio CAT does not hereby release or discharge any party other the WMLP Debtors, their estates, and the WMLP Liquidation Trust, and reserves any and all rights with respect to the Oxford Claim, Claim No. 834 and any and all post-petition, administrative claims of Ohio CAT arising under title 11 of the United States Code, including, but not limited to, 11 U.S.C. §§ 503 or 507, as to all other parties, including, but not limited to, Buckingham Coal Company, LLC, the WLB Debtors, CCU, and any assigns, successors, agents, affiliates, managers, members, principals, officers, directors, employees, representatives, trustees, and professionals.

10. Except for any rights or obligations created or reserved by this Stipulation, the WMLP Liquidation Trust, on behalf of itself and its assigns, successors, agents, representatives, and professionals (the "WMLP Liquidation Trust Releasing Parties"), hereby releases and discharges Ohio CAT, together with its assigns, successors, agents, affiliates, managers, employees, representatives, trustees, and attorneys, from any and all manner of claims, demands, losses, expenses, damages, debts, dues, accounts, fees, costs, interests, covenants, controversies, agreements (other than the Trade Agreement, as modified by this Stipulation), promises, and causes of action or suits, of every kind or nature *in personam* and/or *in rem*, which the WMLP Liquidation Trust may now have, may have had at any time heretofore, or may have at any time hereafter, arising from, resulting from, or in any manner incidental to any and every matter, thing, or event, no matter what, occurring, or failing to occur, at any time in the past up to and including the date hereof with respect to the WMLP Debtors, the provision of any goods by Ohio CAT to the WMLP Debtors, and the Chapter 11 Cases.

11. Additionally (and if applicable), and in consideration of the agreements contained herein, Ohio CAT hereby waives and releases, and agrees to take all actions necessary to remove and release any and all liens asserted or assertable against or upon the WMLP Debtors or any of the leasehold interests, facilities, equipment, hydrocarbons, or other assets in which the WMLP Debtors hold an interest, no later than five business days after Ohio CAT's receipt of the Administrative Claim Payment. Ohio CAT further agrees to cause notice of any and all such waivers, removals, and releases of liens to be delivered to any and all parties that have previously received notice of the existence of any such liens within seven business days of Ohio CAT's receipt of the Administrative Claim Payment. Ohio CAT shall provide the Liquidation Trustee with written notice of all lien releases obtained, copies of the applicable lien release information, and

documentation (including proof of delivery) of all notices delivered in accordance with this section.

12. This Stipulation may be executed in identical counterparts, including by email, each of which shall be deemed an original, but all of which together constitute one and the same document.

13. The Parties acknowledge that this Stipulation is the joint work product of all of the Parties, and that, accordingly, in the event of ambiguities, no inferences shall be drawn against any Party on the basis of authorship of this Stipulation.

14. The Court shall retain exclusive jurisdiction to resolve any dispute arising from or related to the interpretation or enforcement of this Stipulation.

Signed:

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE



/s/

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On behalf of the WMLP Liquidation Trust

/s/

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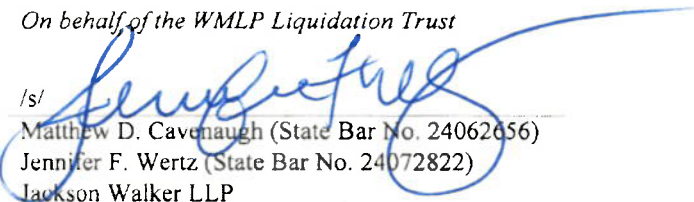
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On behalf of the WMLP Liquidation Trust

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