

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

In re:  WESTMORELAND COAL COMPANY, <i>et al.</i> <sup>1</sup>  Debtors.	§ § § § § § §	Chapter 11  Case No. 18-35672 (DRJ)  (Jointly Administered)
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**WLB DEBTORS’ AND WMLP LIQUIDATION TRUST’S  
RESPONSE IN OPPOSITION TO WESTERN OILFIELD SERVICES CO.  
DOING BUSINESS AS RAIN FOR RENT’S APPLICATION FOR ALLOWANCE  
AND PAYMENT OF ADMINISTRATIVE CLAIMS**

The WMLP Debtors,<sup>2</sup> and after the WMLP Effective Date, the WMLP Liquidation Trust, and the WLB Debtors<sup>3</sup> (collectively, with the WMLP Liquidation Trust, the “Debtors”) respectfully state the following in support of this response in opposition to (this “Response”) *Western Oilfield Services Co. Doing Business as Rain for Rent’s Application for Allowance and Payment of Administrative Claims* [ECF No. 2145] (the “Application”):

**Background**

1. On October 9, 2018 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). On October 18, 2018, the United States Trustee for the Southern District of Texas (the “U.S. Trustee”)

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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 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.

<sup>2</sup> Specifically, the WMLP Debtors are: (a) WMLP; (b) Westmoreland Kemmerer, LLC; (c) Oxford Mining Company, LLC; (d) Harrison Resources, LLC; (e) Oxford Mining Company-Kentucky, LLC; (f) Daron Coal Company, LLC; (g) Oxford Conesville, LLC; and (h) Westmoreland Kemmerer Fee Coal Holdings, LLC.

<sup>3</sup> “WLB Debtors” means all Debtors except for Westmoreland Resources GP, LLC, Westmoreland Resource Partners, LP (“WMLP”), and WMLP’s subsidiaries (collectively with WMLP, the “WMLP Debtors”).

appointed an official committee of unsecured creditors pursuant to § 1102 of the Bankruptcy Code (the “Committee”) [ECF No. 206].

2. On March 2, 2019, the Bankruptcy Court entered the *Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (the “Confirmation Order”) [ECF No. 1561] confirming WLB Debtors’ plan (the “WLB Plan”).

3. On March 15, 2019, the effective date of the WLB Plan occurred (the “Effective Date”) [ECF No. 1608]. Notice of the WLB Effective Date (the “WLB Effective Date Notice”) required requests for payment of administrative expense claims related to the WLB Debtors to be filed within 30 days of the WLB Effective Date (the “WLB Claim Deadline”).

4. On June 5, 2019, the Bankruptcy Court entered the *Order Approving Disclosure Statement and Confirming Amended Joint Plan of Liquidation for the WMLP Debtors, as Modified* (the “WMLP Confirmation Order”) [ECF No. 1967] confirming the WMLP Debtors’ plan of liquidation (the “WMLP Plan”). The WMLP Plan established the WMLP Liquidation Trust.

5. 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* [ECF No. 1966] (the “Kemmerer Sale Order”), for the sale (the “Kemmerer Sale”) of the Kemmerer Assets and certain other assets to Kemmerer Operations, LLC (the “Kemmerer Purchaser”). The Kemmerer Sale closed on June 21, 2019 [ECF No. 2067] (the “Kemmerer Sale Closing Date”).

6. On June 21, 2019, the effective date of the WMLP Plan occurred (the “WMLP Effective Date”) [ECF No. 2068]. Notice of the WMLP Effective Date required requests for payment of administrative expense claims related to the WMLP Debtors to be filed within 30 days of the WMLP Effective Date (the “WMLP Claim Deadline”).

7. On July 18, 2019, Western Oilfield Services Co. dba Rain for Rent (“Rain”) filed its Application, seeking payment for: (i) an administrative claim in the amount of \$8,282.04 for goods sold and/or services rendered from May 10, 2019 through June 18, 2019 with regard to the debtor Westmoreland Kemmerer LLC (the “WMLP Administrative Claim”); and (ii) an administrative claim in the amount of \$111,070.55 for goods sold and/or services rendered from May 20, 2019 through June 28, 2019 with regard to debtor Westmoreland Texas Jewett Coal Company (the “WLB Administrative Claim”).

### **Response in Opposition**

#### **A. The WMLP Administrative Claim**

8. By the Application, Rain seeks payment of services allegedly rendered to the WMLP Debtors from May 10, 2019 through June 18, 2019 as an allowed administrative claim. The WMLP Debtors and WMLP Liquidation Trust submit that they are not liable for the WMLP Administrative Claim because the WMLP Administrative Claim is not reflected as a current liability in the WMLP Debtors’ books and records. Specifically, the WMLP Debtors’ books and records show that the purchase order numbers related to the invoices the subject of the WMLP Administrative Claim have been satisfied.

9. Moreover, pursuant to the Kemmerer Sale, neither the WMLP Debtors nor the WMLP Liquidation Trust are liable for the WMLP Administrative Claim. Under the Kemmerer Sale Order, the WMLP Administrative Claim constitutes a “trade payable,” which is defined as “the accrued and unpaid post-petition trade payables of the Company or of any Seller for goods or

services received prior to such time (whether billed or unbilled)” as of 12:01 a.m. Mountain Time on June 21, 2019. *See* Kemmerer Sale Order, at p. 13. The WMLP Administrative Claim constitutes an assumed liability of the Kemmerer Purchaser. *See* Kemmerer Sale Order, Ex. B, at p. 20. The Court should thus deny Rain’s request for allowance and payment of the WMLP Administrative Claim.

**B. The WLB Administrative Claim**

10. By the Application, Rain seeks allowance and payment of services allegedly rendered to the WLB Debtors during the administration of the bankruptcy cases as an administrative claim. Through the Application, Rain asserts an administrative claim against the WLB Debtors in the amount of \$111,070.55 for services provided from May 20, 2019 through June 28, 2019. The deadline to file administrative claims against the WLB Debtors was on April 15, 2019—two months prior to Rain’s Application, and thus the request is untimely, and should be denied on that basis alone.

11. Furthermore, because this alleged claim arose post-WLB Effective Date, to the extent it represents an actual outstanding liability that has not been paid, it should be paid in the ordinary course of business by the appropriate entity to which Rain provided its services, and is not the proper basis for an allowable administrative claim.

12. Accordingly, the Court should deny Rain’s request for payment of the WLB Administrative Claim.

**Reservation of Rights**

13. The WLB Debtors and the WMLP Liquidation Trust, respectively, reserve their rights and the right of any other party in interest to file any further response or objection to this Application. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor

entity; (b) a waiver of any right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Response or any order granting the relief requested by this Response; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant § 365 of the Bankruptcy Code; or (f) a waiver of any rights under the Bankruptcy Code or any other applicable law

WHEREFORE, the Debtors respectfully request that the Court enter and order denying the Application and for such other relief to which the Debtors may be justly entitled whether at law or equity.

Houston, Texas  
August 8, 2019

*/s/ Matthew D. Cavanaugh*

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**Certificate of Service**

I certify that on August 8, 2019, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas and by e-mail on the party listed below:

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*/s/ Matthew D. Cavanaugh*  
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