

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

In re: WESTMORELAND COAL COMPANY, <i>et al.</i> ¹ Debtors.	§ § § § § § §	Chapter 11 Case No. 18-35672 (DRJ) (Jointly Administered)
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DEBTORS’ RESPONSE IN OPPOSITION TO APPLICATION OF WHEELER MACHINERY CO. FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIMS AND RESERVATION OF RIGHTS

The WMLP Debtors,² and after the WMLP Effective Date, the WMLP Liquidation Trust, respectfully state the following in support of this response in opposition (this “Response”) to the *Application of Wheeler Machinery Co. for Allowance and Payment of Administrative Claims and Reservation of Rights* [ECF No. 2155] (the “Application”):

Background

1. On October 9, 2018 (the “Petition Date”), each WMLP 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”) appointed an official committee of unsecured creditors pursuant to § 1102 of the Bankruptcy Code (the “Committee”) [ECF No. 206].

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 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 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.

2. 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.

3. 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”).

4. 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”).

5. On July 21, 2019, Wheeler Machinery Co. (“Wheeler”) filed its Application, seeking payment in the aggregate amount of \$2,137,252.87 for goods and services provided after the Kemmerer Sale Closing Date and after the Effective Date (the “Administrative Claim”).

Response in Opposition

6. By the Application, Wheeler seeks payment of goods and services provided to the WMLP Debtors on or after the Effective Date and the Kemmerer Sale Closing Date. Pursuant to the Kemmerer Sale, neither the WMLP Debtors nor the WMLP Liquidation Trust is liable for the amounts asserted in the Application. The Administrative Claim is for goods and services provided

on or after the Kemmerer Sale Closing Date. The Kemmerer Purchaser assumed all liabilities arising on or after the Kemmerer Sale Closing Date. *See* Kemmerer Sale Order, Ex. B, p. 20-21 (§ 2.3 Assumption of Liabilities). As such, the WMLP Liquidation Trust requests that the Court deny Wheeler's request for payment of the Administrative Claim as such claim is now a liability of the Kemmerer Purchaser.

Reservation of Rights

7. The WMLP Debtors and the WMLP Liquidation Trust reserve their rights and the rights 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 WMLP Debtor entity; (b) a waiver of the WMLP Debtors' or WMLP Liquidation Trust's 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 the WMLP Debtors' or WMLP Liquidation Trust's rights under the Bankruptcy Code or any other applicable law.

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

Houston, Texas
August 12, 2019

/s/ Matthew D. Cavanaugh

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Certificate of Service

I certify that on August 12, 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.

/s/ Matthew D. Cavanaugh

Matthew D. Cavanaugh