



ENTERED  
09/05/2019

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

<p>In re:</p> <p>WESTMORELAND COAL COMPANY, <i>et al.</i></p> <p style="text-align: center;">Debtors.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Chapter 11</p> <p>Case No. 18-35672 (DRJ)</p> <p>(Jointly Administered)</p> <p><b>Re: ECF No. 1816</b></p>
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**STIPULATION AND AGREED ORDER RESOLVING WMLP DEBTORS' OBJECTION  
TO PROOF OF CLAIM NO. 11-2 FILED IN CASE NO. 18-35672 BY KILGORE  
COMPANIES, LLC DBA LEGRAND JOHNSON CONSTRUCTION**

The WMLP Debtors,<sup>1</sup> and after the WMLP Effective Date, the WMLP Liquidation Trust, and the WLB Debtors<sup>2</sup> (collectively, with the WMLP Debtors or WMLP Liquidation Trust, as applicable, the "Debtors") in the above-captioned cases and Kilgore Companies, LLC dba LeGrand Johnson Construction ("Creditor," and together with the Debtors, the "Parties") hereby enter into this stipulation and order (this "Stipulation and Agreed Order") as follows:

WHEREAS, on October 9, 2018 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"). These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [ECF No. 71];

<sup>1</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>2</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").

WHEREAS, 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];

WHEREAS, the Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409;

WHEREAS, 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 “WLB Confirmation Order”) [ECF No. 1561] confirming WLB Debtors’ plan of reorganization (the “WLB Plan”);

WHEREAS, on March 15, 2019, the effective date of the WLB Plan occurred (the “Effective Date”) [ECF No. 1608];

WHEREAS, 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”);

WHEREAS, on June 21, 2019, the effective date of the WMLP Plan occurred (the “WMLP Effective Date”) [ECF No. 2068];

WHEREAS, on January 18, 2019, Creditor sent a *Preliminary Notice of Lien* (the “Preliminary Lien Notice”) and a *Notice of Intention to File Lien* (the “Lien Notice”) to Debtors Westmoreland Kemmerer Fee Coal Holdings, LLC and Westmoreland Kemmerer, LLC (the “Lien Notice”);

WHEREAS, on February 11, 2019, Creditor filed its Lien Statement in the County of Lincoln, State of Wyoming pursuant to Wyoming Statutes §§ 29-1-312 and 29-2-101 *et seq.* (the “Lien Statement”);

WHEREAS, Debtor Westmoreland Kemmerer, LLC’s Schedules of Assets and Liabilities listed a claim for Claimant (Scheduled Claim No. 50555) (the “Scheduled Claim”);

WHEREAS, Creditor filed Claim No. 11-2 in Case No. 18-35672 (DRC Claim No. 1335) (such claim, the “Claim”);

WHEREAS, the Debtors filed the *WMLP Debtors’ Objection to Proof of Claim No. 11-2 Filed in Case No. 18-35672 By Kilgore Companies, LLC dba LeGrand Johnson Construction* [ECF No. 1816] (the “Objection”) whereby the Debtors requested that the Court reclassify the claim from a secured claim to a general unsecured claim; and

WHEREAS, the Debtors and Creditor have agreed to resolve the Claim, the Objection, and the Scheduled Claim, as provided herein.

**NOW, THEREFORE**, in consideration of the foregoing recitals, which are incorporated into this Stipulation and Agreed Order, the Parties hereby stipulate and agree as follows:

1. The Parties agree that the Claim and any related lien is subordinate to the claims and senior secured first liens of the WMLP Secured Lenders pursuant to Wyoming Statutes § 29-1-402(c).
2. The Parties agree that the Claim is hereby reclassified as a general unsecured claim against Debtor Westmoreland Kemmerer, LLC (Case No. 16-35696), and shall be treated as a General Unsecured Claim under the WMLP Plan.
3. The Parties agree that the Claim supersedes the Scheduled Claim, and the Scheduled Claim is hereby disallowed and expunged.

4. The Creditor agrees that, pursuant to 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* (the “Kemmerer Sale Order”) [ECF No. 1966], the property encumbered by the Lien Statement was sold free and clear of any liens that arose from or relate to Creditor’s Lien Statement.

5. The Clerk of the Court is authorized and directed to update the claims register maintained in these chapter 11 cases to reflect the relief granted in this Stipulation and Agreed Order.

6. Except as otherwise provided herein, nothing in this Stipulation and Agreed Order, nor any actions taken pursuant hereto, shall be deemed: (a) an admission as to the validity of any prepetition claim against any Debtor entity; (b) a waiver of any Party’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 herein; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors’ rights under the Bankruptcy Code or any other applicable law.

7. Neither this Stipulation and Agreed Order, nor any actions taken pursuant hereto, shall constitute evidence admissible against the Parties in any action or proceeding other than one to enforce the terms of this Stipulation and Agreed Order.

8. The terms and conditions of this Stipulation and Agreed Order shall be immediately effective and enforceable upon entry by the Bankruptcy Court.

9. This Stipulation and Agreed Order is intended by the Parties to be binding upon their successors, agents, assigns, including bankruptcy trustees and estate representatives, and any parent, subsidiary, or affiliated entity of the Parties.

10. The undersigned hereby represent and warrant that they have full authority to execute this Stipulation and Agreed Order on behalf of the respective parties and that the respective parties have full knowledge of, and have consented to, this Stipulation and Agreed Order.

11. The Parties agree that each of them, through their respective counsel, has had a full opportunity to participate in the drafting of this Stipulation and Agreed Order and, accordingly, any claimed ambiguity shall be construed neither for nor against either of the Parties.

12. This Stipulation and Agreed Order constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions, agreements, and understandings, both written and oral, among the Parties with respect thereto.

13. This Stipulation and Agreed Order shall not be modified, altered, amended or supplemented except by a writing executed by the Parties or their authorized representatives.

14. The Bankruptcy Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Stipulation and Agreed Order, and the Parties hereby consent to such jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation and Order.

**IT IS SO ORDERED.**

**Signed: September 04, 2019**

  
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DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE

**IN WITNESS WHEREOF**, the Parties, by their authorized counsel, executed this Stipulation and Agreed Order as of the date written below.

Dated: August 30, 2019

**Jackson Walker LLP**  
1401 McKinney Street, Suite 1900  
Houston, Texas 77010  
(713) 752-4200 – Main Telephone  
(713) 752-4221 – Main Facsimile

*/s/ Matthew D. Cavanaugh*

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Matthew D. Cavanaugh  
State Bar No. 24062656  
Direct Dial: (713) 752-4284  
Email: mcavanaugh@jw.com

Jennifer F. Wertz  
State Bar No. 2407282  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
Direct Dial: (512) 236-2247  
Email: jwertz@jw.com

Vienna F. Anaya  
State Bar No. 24091225  
2323 Ross Avenue, Suite 600  
Dallas, Texas 75201  
Direct Dial: (214) 953-6047  
Email: vanaya@jw.com

**COUNSEL TO THE WMLP LIQUIDATION TRUS  
AND THE WLB DEBTORS**

Dated: August 30, 2019

**Strong & Hanni, PC**

102 South 200 East, Suite 800

Salt Lake City, Utah 84111

(801) 532-7080 – Main Telephone

(801) 596-1508 – Main Facsimile

*/s/ Reid W. Lambert*

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Reid W. Lambert (admitted *pro hac vice*)

Direct Dial: (801) 532-7080

Email: rlambert@strongandhanni.com

**COUNSEL FOR CLAIMANT KILGORE  
COMPANIES, LLC DBA LEGRAND JOHNSON  
CONSTRUCTION**