

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

<b>In Re:</b>	)	<b>Chapter 11</b>
	)	
<b>WESTMORELAND COAL COMPANY, et al.</b>	)	<b>Case No. 18-35672 (MI)</b>
	)	
<b>Debtors.</b>	)	<b>(Jointly Administered)</b>
	)	

**RESPONSE TO JOINT MOTION**

COMES NOW, the United Mine Workers of America (“UMWA”), by and through counsel, and files this Response to Joint Motion (the “Response”). For this Response, the UMWA states as follows:

**PLEADINGS**

1. On March 7, 2019, a pleading styled Joint Motion by the Acting United States Trustee and McKinsey Recovery & Transformation Services U.S., LLC and Certain of its Affiliates in Furtherance of Mediation Agreement [Dkt. No. 1589] (the “Joint Motion”) was filed before this Court.

2. As part of the relief requested in the Joint Motion, parties in interest were directed to file responses prior to the Court’s hearing on the pleading.

3. The UMWA files this Response in order to protect and preserve its rights and requests the Court provide further direction and relief related to the Joint Motion.

**BACKGROUND**

4. At the conclusion of the hearing on the parent Debtors’ plan of reorganization in the above-styled case, this Court requested that the UMWA take no further action which would potentially jeopardize the successful reorganization and future employment of UMWA members

prior to further actions of the Court. Moreover, the Court directed the UMWA to closely monitor filings made in this case prior to taking action.

5. The UMWA responded affirmatively to the Court's request and has taken no detrimental action that would result in a long term work stoppage or other substantial business interruption since the Court's request and have closely followed filings before the Court.

6. In furtherance of the Court's request, the UMWA noted that the only material pleading which it appears arguably could affect the bankruptcy estate's funds available to pay creditors, resolve issues with the UMWA, and provide an ultimate resolution of this bankruptcy case was the filing of the Joint Motion.

#### **THE JOINT MOTION**

7. In the Joint Motion, the current acting U.S. Trustee and McKinsey<sup>1</sup> entered into an agreement which would provide, subject to this Court's approval, a resolution of potential disputes between the U.S. Trustee and McKinsey. As part of that, there is a mechanism by which further disclosures will be made by McKinsey, and McKinsey would pay into the bankruptcy estate, upon approval of the Joint Motion, \$5,000,000 for the payment of creditors.

8. Notably, the Joint Motion is not a pleading filed by the Debtors, nor does it appear that the proposed funds that would be paid by McKinsey are either current assets of the bankruptcy estate nor are subject to any liens or recorded security interests. In fact, to the UMWA, it appears that the pleading provides for a payment that would be subject to this Court's discretion regarding the application of such funds.

9. As it relates to the bankruptcy estate, the parent's senior lenders/"New Westmoreland" appear to have no claim on the funds that would be received from McKinsey

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<sup>1</sup> As used herein, "McKinsey" means, collectively, McKinsey & Company, Inc., McKinsey Holdings, Inc., McKinsey & Company, Inc. United States, and McKinsey Recovery & Transformation Services U.S., LLC.

under the Joint Motion. In contrast to this position, upon information and belief, the Debtor and New Westmoreland believe that the McKinsey payment will simply be an offset by monies owed by the Debtors' bankruptcy estate to McKinsey. Counsel for the UMWA has been informed by Debtors' counsel that the \$8,000,000 that is currently owed McKinsey will simply be set off by \$5,000,000, resulting in a \$3,000,000 obligation. It is important to point out, however, that McKinsey has provided services to both the debtor and non-debtor entities that make up New Westmoreland. As a result, the Debtors' anticipated result appears to be inappropriate.

10. Further, this proposed set off is not applicable or authorized under the Bankruptcy Code. The concepts of set off or recoupment require mutuality of the parties. In this instance, the settling party is the U.S. Trustee. The assets to be delivered from McKinsey are not assets that are obligations of the Debtors' bankruptcy estate. Rather those funds are a windfall that is an unforeseen result of the dispute that was ultimately resolved by the Joint Motion.

11. The issue that the UMWA specifically seeks to have this Court rule upon is how the \$5,000,000 payment contemplated under the Joint Motion should be treated. The UMWA respectfully suggests that these funds should be applied obligations owed to the remaining creditors of Westmoreland Coal. Since an agreement has been reached between the Debtors and the Unsecured Creditors Committee, the UMWA regrettably suggests such funds be at least partially allocated to the resolution of the dispute with the UMWA.

#### **CURRENT STATUS OF UMWA CLAIMS**

12. There is an agreement in principle between the various debtors and lenders which would resolve, to the satisfaction of the UMWA, the issues related to new collective bargaining agreements and treatment of retiree healthcare benefits. As part of the TRO which took place before this Court on March 29, 2019, the UMWA went on record to indicate that an agreement in

principle has been reached, however, that agreement is conditioned upon a successful sale of the Kemmerer mine assets to the existing prospective purchaser (“Prospective Purchaser”).

13. Although the Kemmerer mine assets have been authorized to be sold, there are still substantial outstanding questions. Moreover, pursuant to information and belief, it appears that the Prospective Purchaser may not be able to close on the sale. Thus, the proposed settlement between the UMWA, the parties, the Debtors, and the lenders is subject to future uncertainty.

14. The UMWA respectfully stands by its existing settlement. Further, it continues to exercise patience and caution, as requested by the Court, in order to allow for a consensual resolution of all the issues related to the UMWA collective bargaining agreements and retiree healthcare plans. The obligation to provide healthcare is ongoing and under the terms of the presently authorized payment structure will not be sufficient to provide services through the end of the calendar year. The remaining request of the UMWA is that in the event a consensual settlement is not available as a result of a failure of the sale of the Kemmerer mine to the Prospective Purchaser, that the Court direct that the proceeds recovered pursuant to the Joint Motion be directed, at least to some extent, to further satisfy the retiree healthcare benefits that are sought by the UMWA.

### **CONCLUSION**

In conclusion, the UMWA supports the Joint Motion, but believes the Court has the ability and the authority to direct how any funds received in that settlement under the Joint Motion are to be applied. Moreover, the UMWA stands by its existing settlement, but is concerned that settlement is put in jeopardy due to the failure of the sale of the Kemmerer mine to the Prospective Purchaser and accordingly files this pleading out of an abundance of caution.

WHEREFORE, premises considered, the UMWA respectfully requests the Court take into consideration the UMWA's position as it relates to the Joint Motion and directs such further and additional relief as the Court may deem appropriate.

Respectfully submitted,

/s/ R. Scott Williams

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 8, 2019, a true and correct copy of the foregoing was served via this Court's CM/ECF Noticing System on all parties receiving electronic notices in this bankruptcy case.

/s/ R. Scott Williams  
Of Counsel