

3. Admittedly, this retention issue is a unique circumstance given the pending dispute with Mar-Bow Value Partners, LLC and the mediation that has taken place in this case. The UMWA asserts, however, that clear Fifth Circuit authority makes clear that a *nunc pro tunc* consideration is an equitable analysis and this Court has broad discretion. *In re Briscoe Enterprises, Ltd. II*, 994 F. 2d 1160, 1170 (5th Cir. 1993). Absent a full disclosure of all the facts and circumstances, including the retention application to be filed by McKinsey RTS, it is impossible to rationally know or understand whether a *nunc pro tunc* consideration is appropriate.

4. Stated otherwise, the Motion seeks for this Court to prejudge an issue without having all necessary and relevant facts before it. As this Court has noted, prior to a *nunc pro tunc* consideration, the Court must first determine whether it should grant the underlying retention application. *In re Decoutte*, 2018 WL 3078153 (June 20, 2018) (citing *In re: Lyons*, 439 BR. 401, 404-05 (Bankr. S. D. Tex. 2010)). Accordingly, absent the underlying application, a *nunc pro tunc* consideration is premature.

5. The UMWA specifically reserves its rights regarding the application. The UMWA may find that it is not necessary to object or may object on the filing by McKinsey RTS, but that is a question best left for another day.

6. Asking this Court to prejudge the issue of *nunc pro tunc* consideration of the employment application is premature and in stark contrast to existing authority. As a result, the UMWA respectfully requests the Court deny the pending Motion and asks for such further and additional relief as the Court may deem appropriate.

Certificate of Conference

7. On Friday, June 21, 2019 and Monday, June 24, 2019, the undersigned counsel discussed the Motion with Movant's counsel. Although there may be an agreed resolution of this dispute prior to the hearing, at this time it has not been resolved.

Respectfully submitted,

/s/ R. Scott Williams
R. Scott Williams (admitted *pro hac vice*)
Frederick D. Clarke, III (admitted *pro hac vice*)
RUMBERGER, KIRK & CALDWELL, PC
2001 Park Place North, Suite 1300
Birmingham, Alabama 35203
Telephone: 205.327.5550
Facsimile: 205.326.6786
Email: swilliams@rumberger.com
fclarke@rumberger.com

Counsel for the United Mine Workers of America

-and-

Patrick M. Flynn
1225 North Loop W, STE 1000
Houston, Texas 77008-1775
Telephone: 713.861.6163
Facsimile: 713.961.5566
Email: pat@pmfpc.com

Counsel for the United Mine Workers of America

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 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