

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

WESTMORELAND COAL COMPANY, *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 18-35672 (DRJ)

) (Jointly Administered)

)
)
) Re: Docket No. 1947

NOTICE OF FILING OF SECOND REVISED ORDER GRANTING MOTION OF
MCKINSEY RECOVERY & TRANSFORMATION SERVICES U.S., LLC IN
FURTHERANCE OF MEDIATION AGREEMENT

PLEASE TAKE NOTICE that on June 3, 2019 McKinsey Recovery & Transformation Services U.S., LLC (“McKinsey RTS”) filed the *Motion of McKinsey Recovery & Transformation Services U.S., LLC in Furtherance of Mediation Agreement* [Docket No. 1947] (the “Motion”).

PLEASE TAKE FURTHER NOTICE that on June 25, 2019 McKinsey RTS filed a revised order [Dkt. 2086] (the “Revised Order”).

PLEASE TAKE FURTHER NOTICE that during a hearing to consider approval of the relief requested in the Motion, held on June 26, 2019 at 1:00 pm prevailing Central Time before the Honorable David R. Jones, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of Texas (“June 26 Hearing”), the Court approved the Motion subject to the submission of a second revised proposed order incorporating changes made on the record.

PLEASE TAKE FURTHER NOTICE that RTS hereby files a second revised proposed order granting the Motion (the “Order”), attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit B** is a redline of the Order reflecting changes from the Revised Order.

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit C** is a copy of the transcript of the June 26 Hearing.

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 debtors’ 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.

PLEASE TAKE FURTHER NOTICE that copies of all documents in these chapter 11 cases are available free of charge by (a) visiting the Debtors' restructuring website at <http://www.donlinrecano.com/westmoreland>, (b) writing to Donlin, Recano & Company, Inc., Re: Westmoreland Coal Company, *et al.*, 6201 15th Avenue, Brooklyn, New York 11219, (c) calling the Debtors' Notice and Claims Agent at (800) 499-8519 (U.S. and Canada) or (212) 771-11289 (International), or (d) emailing westmorelandinfo@donlinrecano.com.

Houston, Texas
July 3, 2019

/s/ Zack A. Clement

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Attorneys for McKinsey RTS

Certificate of Service

I certify that on July 3, 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/ Zack A. Clement

Zack A. Clement

Exhibit A

Second Revised Proposed Order

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

In re:)	
)	Chapter 11
WESTMORELAND COAL COMPANY, <i>et al.</i> , ¹)	Case No. 18-35672 (DRJ)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket No. 1947

ORDER GRANTING MOTION OF MCKINSEY RECOVERY & TRANSFORMATION SERVICES U.S., LLC IN FURTHERANCE OF MEDIATION AGREEMENT

Upon the motion (the “Motion”)² of McKinsey Recovery & Transformation Services U.S., LLC (“McKinsey RTS”) for entry of this order (the “Order”) in furtherance of the Mediation Agreement [Dkt. No. 1947], all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. § 1409; and this Court having found that the notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and under Local Rule 2014-1(b)(3) and no other or further notice need be provided; and this Court having found that there is good cause for waiving the stay referred to in Bankruptcy Rule 6004(h), to the extent it is applicable; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having

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² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court in this case; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.
2. In furtherance of the Mediation Agreement, the WLB Debtors shall file the New Application for retention *nunc pro tunc* to the petition date, on or before July 3, 2019.
3. Upon the filing of the New Application, the Application shall be deemed withdrawn.
4. The requirements of Bankruptcy Local Rule 2014-1(b) (1) and (b)(2) are hereby met or waived with respect to the New Application.
5. Nothing in this Order authorizing the withdrawal of the Application shall affect, modify, or impair the rights of the United States Trustee with respect to the matters that have been litigated, settled, or remain pending in these cases regarding the Application. This reservation of rights shall include the rights of the United States Trustee under the settlement previously approved by this Court pursuant to the Corrected Order Approving Settlement Agreement between United States Trustee and McKinsey & Co., Inc. and Certain of its Affiliates [Dkt. No. 1769].
6. Nothing in this Order impairs or enhances any party's right to timely object to the New Application.
7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.
8. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

9. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2019
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Redline of Second Revised Proposed Order

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

In re:)	
)	Chapter 11
WESTMORELAND COAL COMPANY, <i>et al.</i> , ¹)	Case No. 18-35672 (DRJ)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket No. 1947

ORDER GRANTING MOTION OF MCKINSEY RECOVERY & TRANSFORMATION SERVICES U.S., LLC IN FURTHERANCE OF MEDIATION AGREEMENT

Upon the motion (the “Motion”)² of McKinsey Recovery & Transformation Services U.S., LLC (“McKinsey RTS”) for entry of this order (the “Order”) in furtherance of the Mediation Agreement [Dkt. No. 1947], all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. § 1409; and this Court having found that the notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and under Local Rule 2014-1(b)(3) and no other or further notice need be provided; and this Court having found that there is good cause for waiving the stay referred to in Bankruptcy Rule 6004(h), to the extent it is applicable; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having

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² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court in this case; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.
2. In furtherance of the Mediation Agreement, the WLB Debtors shall file the New Application for retention *nunc pro tunc* to the petition date, on or before July 3, 2019.
3. Upon the filing of the New Application, the Application shall be deemed withdrawn.
4. The requirements of Bankruptcy Local Rule 2014-1(b)(1) and (b)(2) are hereby met or waived with respect to the New Application.
5. Nothing in this Order authorizing the withdrawal of the Application shall affect, modify, or impair the rights of the United States Trustee with respect to the matters that have been litigated, settled, or remain pending in these cases regarding the Application. This reservation of rights shall include the rights of the United States Trustee under the settlement previously approved by this Court pursuant to the Corrected Order Approving Settlement Agreement between United States Trustee and McKinsey & Co., Inc. and Certain of its Affiliates [Dkt. No. 1769].

6. Nothing in this Order impairs or enhances any party's right to timely object to the New Application.

6.7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

7.8. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

8.9. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2019
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit C

Transcript of June 26, 2019 Hearing

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

IN RE: § CASE NO. 18-35672-H2-11
§ HOUSTON, TEXAS
WESTMORELAND COAL COMPANY, § WEDNESDAY,
ET AL, § JUNE 26, 2019
DEBTORS. § 1:28 P.M. TO 2:11 P.M.

MOTION HEARING

BEFORE THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE
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1 HOUSTON, TEXAS; WEDNESDAY, JUNE 26, 2019; 1:28 P.M.

2 THE COURT: Let me go to Case No. 18-35672,
3 Westmoreland Coal Company. Take appearances when you're
4 ready.

5 (Pause in the proceedings.)

6 COURT SECURITY OFFICER: All rise.

7 (Recess taken from 1:25 p.m. to 1:28 p.m.)

8 COURT SECURITY OFFICER: All rise.

9 THE COURT: All right. Thank you, everyone.
10 Please be seated.

11 I do apologize for the interruption.

12 Back on the Record, Case No. 18-35672,
13 Westmoreland Coal Company.

14 Mr. Pesce, we'll take appearances, please.

15 MR. PESCE: Good afternoon. Gregory Pesce,
16 Kirkland & Ellis, on behalf of Westmoreland Coal Company and
17 I'm joined on the phone by my partner, James Sprayregen.

18 THE COURT: All right. Thank you. Good
19 afternoon.

20 MR. SPRAYREGEN: Good afternoon, Your Honor.

21 THE COURT: Good afternoon.

22 Mr. Williams?

23 MR. WILLIAMS: Your Honor, Scott Williams here on
24 behalf of United Mine Workers of America.

25 THE COURT: Thank you. Good afternoon.

1 MR. O'SHEA: Good afternoon, Your Honor. Sean
2 O'Shea from Mar-Bow. Chris Murray just stepped out, but
3 I'll introduce him, as well.

4 THE COURT: I got it. I recognize him.

5 (Telephone conference announcement.)

6 THE COURT: Mr. Duran?

7 MR. DURAN: Good afternoon. Hector Duran on
8 behalf of the United States Trustee.

9 THE COURT: Thank you. Good afternoon.

10 Mr. Clement?

11 MR. CLEMENT: Good afternoon, Your Honor. Your
12 Honor, for McKinsey Recovery and Transformation Services,
13 Zach Clement, Faith Gay, Jennifer Selendy, Erica Iverson,
14 John Gleeson, Erica Weisgerber.

15 THE COURT: All right. Thank you. Good
16 afternoon, everyone.

17 MR. CLEMENT: I think Ms. Gay will speak for us.

18 THE COURT: And let me get the rest of the folks
19 on the telephone.

20 Anybody on the telephone wish to make an
21 appearance in the Westmoreland Coal Company matter?

22 (No audible response.)

23 THE COURT: That was easy --

24 MR. SPRAYREGEN: Your Honor, James Sprayregen. I
25 think you got me already.

1 THE COURT: I do have you. Thank you,
2 Mr. Sprayregen.

3 Anyone else?

4 MS. MANOUKIAN: Your Honor, Kristine Manoukian for
5 the MLP Lenders and Camera Operations, LLC, from Schulte
6 Ross and Zabel.

7 THE COURT: Thank you. Good afternoon.

8 Anyone else?

9 (No audible response.)

10 THE COURT: All right. Ms. Gay?

11 MS. GAY: Thank you, Your Honor. Good afternoon.

12 THE COURT: Good afternoon.

13 (Telephone conference announcement.)

14 MS. GAY: Is that somebody else there you want to?

15 THE COURT: No.

16 MS. GAY: Okee doke.

17 THE COURT: Don't know how to turn that off. I'll
18 figure that out.

19 MS. GAY: And so, Your Honor, at Docket No. 1947,
20 McKinsey has moved the Court to withdraw its current
21 application and replace it with a new one and asking for
22 *nunc pro tunc* relief to have it -- the new application date
23 back to the date of the original application.

24 THE COURT: All right.

25 MS. GAY: The motion arises out of a mediated

1 settlement, which Your Honor initiated, which encompassed a
2 fairly unique and wide group of folks, the Westmoreland
3 Debtors, the Debtors from two other bankruptcies, A&R and
4 SunEd, the US Trustee, Mar-Bow, which had issues in all
5 those cases with its competitor McKinsey, and of course,
6 McKinsey RTS.

7 The mediation resulted in two settlements, not
8 settlements across the board, but settlements that were, I
9 would say, the result of extraordinary efforts by Judge
10 Isgur as a mediator. The two settlements were, one, between
11 the US Trustee and McKinsey, and on the other hand, between
12 the Westmoreland Debtors and McKinsey.

13 There was no settlement reached between Mar-Bow
14 and McKinsey.

15 After having several conversations this week with
16 Mr. Hobbs, let me make clear at the outset that this motion
17 does not seek to contract, expand or otherwise affect the
18 agreements made under the settlements. And in particular, I
19 want to say again, at the request of the US Trustee after
20 speaking with Mr. Hobbs, let me reiterate, there is a
21 settlement agreement between the US Trustee and McKinsey and
22 there is no thought, no possibility under this motion that
23 the rights of the Trustee, US Trustee, or McKinsey would be
24 changed by this motion.

25 What the motion tries to do on the other hand is

1 to take a concrete step forward in effectuating the other
2 settlement between McKinsey and Westmoreland. And in that
3 settlement, that mediated settlement, there was a path set
4 out for RTS, McKinsey RTS' retention in Westmoreland.

5 And specifically and briefly, Your Honor, RTS
6 agreed to retain an expert to work with it to develop new
7 disclosure procedures and to apply those new procedures,
8 whatever they were in this case, and if the new procedures
9 satisfy the Debtors, McKinsey RTS would prepare new
10 disclosures and the Debtors would seek court approval to
11 retain McKinsey at that time.

12 That sequence of events, that sort of sequence and
13 schedule was so ordered by this Court on February 21st of
14 this year. So to develop those new procedures, Westmoreland
15 and in the Westmoreland case, McKinsey RTS hired two
16 experts, Mr. Jan Baker and Mr. Paul Zingerman. While
17 Mr. Baker and then Mr. Zingerman began to work, RTS again
18 appeared here for an April 16th hearing to approve the
19 settlement with the US Trustee.

20 At the end of that hearing, the Court set a
21 deadline, a hard deadline for the filing of any new
22 application, disclosures or withdrawal. The Court
23 emphasized at that time leaving everybody's options open --
24 and Judge, I remember that very clearly, that McKinsey might
25 decide not to go forward and that Mar-Bow, if McKinsey RTS

1 did go forward, Mar-Bow might decide that it wouldn't object
2 to the new disclosures after all.

3 So Mr. Baker and Mr. Zingerman came forward with a
4 new protocol. The Court has made it clear it's not going to
5 pass on the protocol itself, but it was filed on June 3rd,
6 2019 and immediately thereafter we filed this motion to
7 confirm McKinsey RTS' intent to proceed with its retention
8 here and to file a new application in this case.

9 The Trustee has raised the question with us, which
10 is a fair question, you know, why is this a new application?
11 Why must it be a new application? And there's a couple of
12 pretty clear answers, Your Honor. First of all, under the
13 protocol that Mr. Baker and Mr. Zingerman came up with, the
14 Debtors must seek retention not only of RTS McKinsey, but
15 also of any McKinsey entity that employs consultants serving
16 the Debtor in this bankruptcy.

17 That fact alone, which was not anticipated when
18 RTS and the Debtors filed their joint February 20th motion,
19 supports the need to file a new application for entities
20 that were not included in the original application.

21 But beyond that technical answer, which I think is
22 an important and material one, a huge issue here is trying
23 to get the Record accurate, candid and straight, Your Honor.
24 What is being filed by McKinsey next week on July 3rd is a
25 brand new effort using Mr. -- using the new protocol that's

1 been put in and submitted to -- not for the Court's review,
2 but submitted to the Court by Mr. Baker and Mr. Zingerman.
3 It's a new soup-to-nuts effort, including new entities.
4 It's not a correction. It's not a supplement of the old
5 application, it's a new vehicle. And to label it anything
6 else would be a misrepresentation. And we want to make that
7 clear on the Record now.

8 Obviously the Court has absolute discretion
9 whether to grant *nunc pro tunc* relief and obviously it's not
10 a situation where the professionals providing the services
11 have sat on their hands and failed to apply timely. The
12 Westmoreland Debtors filed the original application to
13 retain RTS within the 30 days. It was filed on
14 November 8th, 2018. It met Local Bankruptcy Rule 2014(1)(B)
15 then and let me just make sure I put on the Record why I
16 think the factors under Local Rule 2014(1)(B) are met now.
17 If an out-of-time application is filed, there's three things
18 that we owe the Court and we owe the parties.

19 One is an explanation of why the application was
20 not filed earlier and the explanation, Your Honor, is just
21 what I've said, which is this protocol didn't exist before
22 this month and as soon as it was put into place and it was
23 put into place because of a mediated settlement, we came to
24 court immediately.

25 We also have to explain why the Order authorizing

1 employment is required *nunc pro tunc*. Well, it's because
2 it's out of time.

3 And finally, we owe the Court an explanation to
4 the best of our knowledge as to whether this would prejudice
5 any parties-in-interest, and let me just be clear about
6 that. Here, all of the parties have been on notice of RTS
7 work for the Debtors and intention to seek retention by the
8 Court for some time, certainly within the applicable time
9 period. And it's taken up quite a bit of the Court's
10 attention. I don't think it's a secret that our application
11 is out there and it has drawn quite a bit of attention,
12 especially from Mar-Bow. It would be hard for that to be
13 described as "under the radar."

14 And on top of that, again, after discussion with
15 the US Trustee, I want to be crystal clear on the Record
16 McKinsey fully expects to be put to its proof on the
17 question of whether we have complied with Rule 2014 and
18 whether we are, RTS and associated entities, are
19 disinterested under Section 327.

20 This motion is not looking to avoid the
21 obligations under 327 or 2014. By filing it now it has --
22 did not cross our mind, it's not our intent. When I read
23 the Miner's objections here, I just want the Court to be
24 clear, we're not looking for pre-approval of our unfiled
25 application.

1 Seemingly and looking at the US Trustee's
2 objection here, it agrees with the way I'm presenting this,
3 and by that it expressly requests that the Court Order
4 granting *nunc pro tunc*, if we go that way, set forth
5 language clarifying that any new application must comply
6 with Bankruptcy Codes and Rules, including 327 and 2014. We
7 violently agree with that. We welcome that. That can be
8 part of any Order as far as we are concerned.

9 And finally, Your Honor, just to be clear on the
10 Record, again as requested by the US Trustee and various
11 pieces of what I can glean from the Miner's motion:
12 Allowing us to file this does not prejudice the rights of
13 any party. This Court has promised to hearing repeatedly on
14 McKinsey RTS' disclosures and disinterestedness. The
15 requirements of Rule 2014 and 327 I'm sure will be
16 aggressively litigated here, as far as we can tell.

17 The Trustee's rights are fully preserved in the
18 settlement agreement. This motion doesn't abridge that
19 right.

20 The Miners say they want a chance to review our
21 application. They might think it's okay, they might not.
22 This motion does not keep them from doing it. We welcome
23 that.

24 Mar-Bow has already made it loud and clear to the
25 Court that our new application will fail in their eyes

1 because it finds the work of Mr. Baker and Mr. Zingerman
2 deficient on the new protocol. And the motion is not an
3 attempt to silence their complaints with the protocol or
4 their likely criticism of the new application. I always
5 hope that they'll find it to be perfect, but I'm assuming
6 they'll have criticism.

7 Any party, forgetting just the three objections
8 that are here that has a cognizable objection, can object to
9 the new application. And I haven't seen any other party
10 check the Docket this morning that's expressed a concern.

11 So the motion simply seeks leave to file a new
12 application next week on July 3rd, using Mr. Baker and
13 Mr. Zingerman's protocol as a guide. We expect to be put to
14 the test on 327 and 2014. We think we'll pass it. We
15 welcome the task and we ask that the application be granted
16 back to the filing date -- the new retention application be
17 granted back to the filing date of the original application
18 for the reasons I've just outlined, which are really
19 basically three. I think you have those, Your Honor.

20 THE COURT: All right. So let me ask you, if I
21 could, just a couple of questions because I was trying to
22 sort my way through the 2014-1 issue, if you will. So with
23 respect to -- and do you have 2014-1 in front of you?

24 MS. GAY: Let me get it, Your Honor.

25 THE COURT: Please.

1 (Pause in the proceedings.)

2 THE COURT: And so again, I'm just trying to work
3 my way through the Rule and what you're asking me to do.

4 So obviously the big concern -- you know, (b) (1)
5 is not an issue because you're not going to fit within there
6 and quite frankly no one believes the rule when it says when
7 you do it within 30 days, you don't need *nunc pro tunc*.
8 People file it anyway.

9 With respect to (b) (2), I don't have any need for
10 that explanation so I get the request for a waiver of those
11 explanations. I understand perfectly how we got here. I
12 don't need for you to regurgitate history. I got that part
13 of it.

14 I don't think that you really meant to do away
15 with (b) (3) because I think I do have -- I think it's very
16 clear that I have to hold a hearing and I have to give
17 notice and opportunity for people to object. So I don't
18 think you really meant to ask me to waive (b) (3).

19 (Telephone conference announcement.)

20 THE COURT: And so again, to me, I think -- I
21 thought we've always been clear and I think you said it in
22 your argument is that, you know, people are going to see
23 this application. They're going to have an opportunity to
24 review it, they're going to have an opportunity to read it,
25 and they can file whatever it is that they want to file.

1 And so my inclination is -- and again, I'm just
2 trying to work my way through this, is that I don't need
3 that explanation that's set forth in (b)(2), (a), (b), and
4 (c). I don't need that at all. I think by definition, we
5 are meeting (b)(3) regardless and what I'm going to hear at
6 the hearing is whether or not you should be employed and
7 from what date you should be employed.

8 And again, I get to incorporate everything that
9 has happened before me throughout this entire case. This is
10 a very unique set of circumstances. I understand how we got
11 here. I have a good idea of what's coming, or at least I
12 think I do. And you know, why isn't that the right balance
13 from your point of view in terms of you want to file a new
14 application? I'm inclined to let you file a new
15 application.

16 I'm certainly not going to do away with the due
17 process issue that is embodied within (b)(3), but you're not
18 asking me to.

19 MS. GAY: That's correct, Your Honor.

20 THE COURT: And with respect to giving me
21 explanations as to why *nunc pro tunc* approval is
22 appropriate, number one, I think you already have; number
23 two, I don't really need it because I understand, again, how
24 we got here.

25 And if someone wants to -- and I'm going to pick

1 on Mr. Williams just because he's closest. If Mr. Williams
2 wants to stand up and say, "This is just wrong for the
3 following reasons. It shouldn't go back to, you know,
4 July 3rd, whatever date it was. It ought to be from
5 September 1, or it ought to be from now."

6 I mean, I'm going to hear that argument. It is my
7 view of life. It's going to take a pretty powerful argument
8 on the timing issue, but I'm going to listen to it is my
9 sense of what I should be doing, and by listening to it,
10 number one, I think that I hear everybody's concerns, which
11 I always believe more information is better than less
12 information, and hopefully I end up in the right place. I
13 also think it takes away, quite honestly, a lot of the
14 objection today or a lot of the legitimate objection, at
15 least as I read it in the various papers that have been
16 filed.

17 And I don't see why this is not the right balance,
18 given where we are. Tell me where I'm wrong.

19 MS. GAY: No, Your Honor, I think we'd take your
20 guidance on that and you're not going to hear a pushback
21 from me on that.

22 THE COURT: Okay. All right. Thank you.

23 MS. GAY: Thank you, Your Honor.

24 THE COURT: All right. Let me -- Mr. Duran, let
25 me start with you because at least as I read the papers, you

1 were -- I think that your client was the easiest to sort of
2 work my way through.

3 If we make the tweaks that I've suggested and
4 given the comments that I've made, I don't see that I've run
5 afoul of any rule or that I'm denying any party an
6 opportunity to meaningfully participate in the process and I
7 think that that's what 2014-1 is designed to do.

8 MR. DURAN: I want to make sure I understood what
9 the Court was saying.

10 THE COURT: Sure.

11 MR. DURAN: As I understand it under Local
12 Rule 2014-1(b)(1) -- I mean, (b)(2)(a) and (b), those are --

13 THE COURT: Well, (a), (b), and (c), I don't need
14 those explanations. I think they've already been provided.
15 I think the course of history, no one who has participated
16 or cares about this process can get up in front of me and
17 legitimately say that they don't understand how we got here,
18 and I think that 2014-1(2)(a), (b), and (c), are solely
19 designed to inform the uninformed about why the normal
20 process didn't exist in a particular case.

21 Every chat room, every news reporting agency,
22 everything that's out there has covered this from start to
23 finish, and so -- and since that application or since that
24 explanation is really for me, I'm just saying, I don't -- I
25 understand exactly where we are. I mean, most of the time

1 that I get this is I don't know about the existence of the
2 lawyer. I've got a PI lawyer who is over in State Court
3 who's pursuing a piece of litigation and I don't even know
4 that that person exists, and so the *nunc pro tunc* then makes
5 all the sense in the world for me, because they're coming in
6 and saying, well, here's what I've been doing and here's
7 what I did. I didn't know about the bankruptcy. My client
8 lied to me. You know, I actually sent the application. I
9 filed it in the State Court. Everybody is going to laugh,
10 but that's actually happened.

11 You know, all of these things that make sense to
12 me that helped me make the right decision. For this one, I
13 simply don't need that and so it would be duplicative. It
14 doesn't take away anybody's argument to say that *nunc pro*
15 *tunc* isn't appropriate. It just says, I don't need that
16 explanation is what I was saying.

17 MR. DURAN: The thing that I'm concerned about
18 there is the reservation of rights. While we appreciate
19 McKinsey's efforts to address the matter of the US Trustee's
20 settlement, by submission of the revised proposed Order, we
21 don't understand why the reservation was limited to just
22 solely to the US Trustee's rights.

23 THE COURT: So help me there. I don't know what
24 you're talking about. I mean, I read the paragraph that was
25 added to the Order, and I don't understand the relevance of

1 that paragraph to what I'm talking about. All I'm talking
2 about is technical compliance with a Local Rule that's
3 designed to educate me as to how we got to the *nunc pro tunc*
4 application. I am painfully aware of how we got to the *nunc*
5 *pro tunc* application that's coming. And I was just saying,
6 I don't need it. I'm not taking away anybody's rights. I'm
7 not changing anything, I just don't need to go see 15 cites
8 to *Triangle Chemicals* and a long explanation. That's all
9 I'm saying.

10 MR. DURAN: Okay.

11 THE COURT: And then I think Ms. Gay acknowledged
12 that they didn't mean to take away the due process
13 requirement that's embodied in (b) (3). Of course we're
14 going to have a hearing and of course everybody is going to
15 know about it. Nobody is going to be prevented from making
16 an argument or raising an issue or, you know, delving into
17 the disclosures and all of that -- whatever the issues are.
18 I mean, she never meant to take away that due process issue
19 and she told me so and so I think that that wasn't take
20 away.

21 So what we're really talking about is that
22 technical disclosure in (b) (2).

23 MR. DURAN: I think if they didn't mean to impair
24 anybody substantive rights, then I think it should be
25 included in the Proposed Order.

1 THE COURT: Okay. So but again, I want to get to
2 your issue, but with respect to the technical requirement of
3 2014-1(b)(2)(a), (b) and (c), are you agreeing with me that
4 that just doesn't need to be repeated?

5 MR. DURAN: We have taken the position that we
6 believe McKinsey should be required to make a Record and
7 establish cause for *nunc pro tunc* relief in connection with
8 any new retention application.

9 THE COURT: Okay. So I'll take judicial notice of
10 the proceedings in the case and we're there.

11 MR. DURAN: Okay.

12 THE COURT: Okay? All right. So now walk me
13 through the due process issue that we've -- that you're
14 concerned about with respect to the Amended Order. Now I
15 did not pick this up.

16 MR. DURAN: Well, -- and I'm referring to the
17 revised Proposed Order at 2086.

18 THE COURT: Yeah, let me get it up and I'll put it
19 up for everybody and I'm so proud now because all of my
20 screens work.

21 (Pause in the proceedings.)

22 MR. DURAN: Paragraph 5 was what was included.

23 THE COURT: Okay.

24 MR. DURAN: Right, and it doesn't impair our
25 rights based upon that paragraph, but if this was merely a

1 procedural request and if McKinsey did not intend to
2 impair --

3 THE COURT: This paragraph was intended to give
4 you confidence that they weren't trying to undo the
5 settlement.

6 MR. DURAN: Right.

7 THE COURT: That's all this was intended to do.
8 This was a "make you happy" paragraph.

9 MR. DURAN: Right. And I just wondered why we
10 wouldn't include the rights of any other party?

11 THE COURT: Because you're the only party that's a
12 party to a settlement agreement. You made the suggestion
13 that they were somehow violating or about to violate the
14 settlement agreement and they were trying to give you
15 comfort that they in no way intended to do that. This was
16 all about really trying to make you happy.

17 Ms. Gay, am I wrong in reading that?

18 (Counsel confer.)

19 MS. GAY: No, you're not wrong. Your Honor, we're
20 happy to have paragraph 5 in or out. We don't necessarily
21 think it's necessary, but you know, there's two settlements,
22 one with the US Trustee and one with Westmoreland.

23 THE COURT: Right.

24 MS. GAY: And we want to be clear. We're not
25 trying to obviate, but rather trying to effectuate.

1 THE COURT: Again, I like my language better
2 because it's shorter.

3 MS. GAY: Yes.

4 THE COURT: But they're just trying to make you
5 happy.

6 MR. DURAN: And we are happy. I mean, my client
7 is happy with that. We just thought --

8 THE COURT: So what you want is some separate
9 language that just says that the Order allowing the
10 withdrawal doesn't affect any party's rights to challenge
11 the application. Does that?

12 MR. DURAN: Or it doesn't impair anybody's
13 substantive rights, whatever those rights may be.

14 THE COURT: To do what?

15 MR. DURAN: To object.

16 THE COURT: To challenge the application?

17 MR. DURAN: To challenge.

18 THE COURT: I think, Ms. Gay, you've said that.
19 Is there anything that I'm missing?

20 MS. GAY: I'm trying to formulate a short
21 sentence.

22 THE COURT: Ah, don't. Then I'll make a long
23 sentence just to keep you on your toes, so.

24 MS. GAY: Exactly. I'm starting to understand
25 that.

1 For the -- in terms of objecting to the new
2 application, I don't think we can grant anyone rights they
3 don't have or otherwise, but obviously the new application
4 is going to be hanging out there for everyone to criticize
5 as they want.

6 THE COURT: Yeah. So would you have any objection
7 to some language -- and again, I'm not trying to put words
8 in your mouth, genuinely, I'm not -- that just says that
9 nothing in this Order impairs any party's rights to object
10 to the new application?

11 MS. GAY: I don't think there's any problem with
12 that at all, Your Honor.

13 THE COURT: And let's add "timely object" to the
14 application.

15 MS. GAY: Yeah, and I mean, obviously if someone
16 makes an objection that's not legally cognizable, you will
17 deal with it, not us.

18 THE COURT: Right. So Mr. Duran, if we added that
19 sentence, are you satisfied?

20 MR. DURAN: I think so. I guess my client had
21 taken the position we didn't think we needed a new
22 application, but since we have now the new protocol, --

23 (Telephone conference announcement.)

24 MR. DURAN: -- we can kind of understand that.

25 THE COURT: I got it.

1 MR. DURAN: The Court has already talked about
2 cause under the local rule.

3 THE COURT: Right.

4 MR. DURAN: And the only other issue was the
5 reservation of rights. It's got it for us, we just thought
6 it should include any other party.

7 THE COURT: Well, I think that what you're
8 actually asking for -- again, I'm not trying to tell you
9 what you're asking for, but I actually think that you're
10 asking for a different reservation.

11 Paragraph 5 is intended to make you happy with
12 respect to the settlement agreement. McKinsey doesn't have
13 a settlement agreement with everybody. If they had a
14 settlement agreement with everybody, we wouldn't have all
15 these folks in the room.

16 MR. DURAN: True.

17 THE COURT: And so what I was suggesting -- and I
18 think Ms. Gay had agreed to even before I suggested it, was
19 nothing in the Order will impair a party's rights to object
20 to the new application.

21 So whatever rights there are to object to the
22 application, whatever inquiry folks believe is appropriate,
23 that's going to exist, and I don't think I've been
24 unambiguous about that point throughout the entire time.

25 MR. DURAN: I don't think so.

1 THE COURT: I've said when we get here, we're
2 going to have a fight. I just want to make sure that
3 everybody is clear about what we're fighting about because I
4 only want to do this one time.

5 MR. DURAN: I understand.

6 THE COURT: Okay? So you okay if we add that
7 sentence?

8 MR. DURAN: If we add that to paragraph 5, any
9 other party --

10 THE COURT: I was actually thinking of
11 paragraph 6, so -- 'cause it's important and it deserves its
12 own paragraph.

13 MR. DURAN: Very good.

14 THE COURT: All right.

15 MS. GAY: And just to be clear, Your Honor, again,
16 our intent in bringing this motion is not to impair or
17 confer any rights, but rather to say, here's a new
18 application, have at it. So we'll --

19 THE COURT: I'm perfectly fine that if you want to
20 say it does not impair or enhance any party's rights --

21 MS. GAY: Right.

22 THE COURT: -- to object to the -- I mean, I get
23 it. And again, I think we've all been clear as to what
24 we're doing.

25 MS. GAY: Right.

1 THE COURT: You're going to file an application.
2 I am less willing to start talking about what the
3 application means because I haven't seen it.

4 MS. GAY: Correct.

5 THE COURT: I don't know what it's going to say.

6 So I mean, we've all got to get it and then we can
7 all decide what it means and what we think of it and what we
8 think of the protocol. Is it enough? Is it not enough?
9 Should there be something else? I mean, all the questions
10 that people are going to want to ask, I'm still going to
11 hear those. I'm just trying to get the document in front of
12 everybody that we're going to fight about.

13 So you're okay if we add that sentence?

14 MR. DURAN: Yes.

15 THE COURT: Okay. Mr. Williams, let me move next
16 to you because I think with that, doesn't that cover you?

17 MR. WILLIAMS: Absolutely, Your Honor.

18 THE COURT: Okay.

19 MR. WILLIAMS: My concern was in the motion -- I
20 don't have a problem with filing a new application. I think
21 that's appropriate, and I've been here for most of all of
22 this. I think it's appropriate for them to do that.

23 I was concerned about pre-judgment the *nunc pro*
24 *tunc* issue.

25 THE COURT: I got it.

1 MR. WILLIAMS: And you've already addressed that,
2 so I'm fine with that issue.

3 THE COURT: Okay. So the only language that you
4 -- or do you agree that the only language that we need to
5 add is we need to make the tweaks to 2014-1 to make it
6 clear, and then add the paragraph -- what would be the new
7 paragraph 6 that subject to your wordsmithing that I just
8 put on the Record?

9 MR. WILLIAMS: Exactly, Your Honor, as long as I
10 -- I'd like to take a glance at it before it gets filed.

11 THE COURT: Of course, of course.

12 MR. WILLIAMS: But I think that will resolve it.

13 For this Court's purposes, could I -- I'm hesitant
14 to do this, but I want the Court to be cognizant of
15 something I thought of.

16 THE COURT: Sure.

17 MR. WILLIAMS: The fact that somebody other than
18 this Court may ultimately look at this issue.

19 THE COURT: I assume they will.

20 MR. WILLIAMS: The Court taking judicial notice
21 that you don't need all that --

22 THE COURT: Well, I wasn't actually doing it. I
23 said all I have to do is to this right, right? I didn't
24 actually do it today.

25 MR. WILLIAMS: I understand. I just was --

1 THE COURT: I'm very careful with my words.

2 MR. WILLIAMS: You usually are, and I appreciate
3 that very much. Thank you, Your Honor. I just wanted to
4 raise that because I wouldn't want to go down a rabbit hole
5 and have to redo that.

6 THE COURT: No, I got it. I was just trying -- I
7 was trying to delicately point out to Mr. Duran that that
8 was a rabbit trail that, quite honestly, just didn't need to
9 be run.

10 MR. WILLIAMS: Understood.

11 THE COURT: All right.

12 MR. WILLIAMS: Thank you, Judge.

13 THE COURT: Thank you.

14 Who's taking the lead for Mar-Bow?

15 MR. O'SHEA: I will. Sean O'Shea, Your Honor.

16 THE COURT: Thank you, Mr. O'Shea.

17 Have I solved any of your problems?

18 MR. O'SHEA: Not quite, Your Honor.

19 THE COURT: I haven't solved any of them?

20 MR. O'SHEA: Well, you may have and we may be able
21 to solve them together.

22 THE COURT: Okay.

23 MR. O'SHEA: But Your Honor, we don't dispute that
24 the Court has permitted McKinsey to file amended
25 disclosures. In fact, I think on April 16th you said they'd

1 have one last attempt.

2 But the question really for the Court is why they
3 need this *nunc pro tunc* tactic? Rather than the simple
4 amendment that the Court ordered them to file back on
5 April 16th and that they agreed that they would file to make
6 this -- I forget Ms. Gay's exact words, but something like:
7 We want to make it exact.

8 So now we come --

9 THE COURT: All right. So first of all, let's you
10 and I get on the same page.

11 MR. O'SHEA: Sure.

12 THE COURT: First of all, I didn't order them to
13 file an amendment. I was very clear that I wasn't dictating
14 what they could file. I think my words were: Whatever it
15 is you choose to file.

16 MR. O'SHEA: Or whatever you choose to file, or
17 you could withdraw, as I recall Your Honor saying.

18 THE COURT: I know exactly what I said.

19 MR. O'SHEA: Yeah, right.

20 THE COURT: But I did not say that they had to
21 file an amendment, which is where you started off. So
22 again, I want to get on the right page. I listen to the
23 words very carefully and trying to put words in my mouth in
24 this proceeding will not go well.

25 Am I conveying a thought to you?

1 MR. O'SHEA: And I'm not trying to put words in
2 the Court's mouth.

3 THE COURT: And not talking over the top of the
4 Judge is probably a habit that you should lose for this
5 proceeding. So are we now on the same page?

6 MR. O'SHEA: We are, Your Honor.

7 THE COURT: Good. Go ahead.

8 MR. O'SHEA: So the question is: Why they need a
9 *nunc pro tunc* procedure rather than the amendment, that I
10 think Your Honor will at least agree with me, was discussed
11 on April 16th, and that McKinsey said that they would be
12 filing.

13 So the question is: Why McKinsey is in here
14 asking for this rare and exceptional remedy, according to
15 the Fifth Circuit in *Triangle Chemicals*.

16 Now we're happy here that McKinsey is saying
17 they're not looking to circumscribe our rights, but one of
18 the things that I'm hearing is that we'll be able to
19 challenge ultimately what they file.

20 I think equally as important for the Court to
21 consider is that Mar-Bow and other interested parties should
22 be free to seek appropriate relief as to the original
23 defective disclosures and all the other conduct leading up
24 to that.

25 And I think, Your Honor, when McKinsey requested

1 the protocol process, they asked for -- and I quote, this is
2 at Docket 1422, page 3, paragraph 5. And Your Honor, this
3 was filed on February 20th of this year, before our last
4 hearing on April 16th. And when they asked for the protocol
5 process, they said they wanted, quote:

6 "Adequate time to supplement the current application to
7 employ."

8 Then we go, Your Honor, to April 16th, almost two
9 months after the conclusion of the mediation, the Court --
10 Your Honor acknowledged our right to discovery and you
11 directed -- and again, I don't want to overstep here, but
12 whatever McKinsey was going to do, either file amended
13 disclosures or withdraw from the case entirely, that was up
14 to them. And that is what was discussed.

15 Notably, Your Honor, the mediation had long been
16 concluded and there was nothing said about a need for *nunc*
17 *pro tunc* relief. And certainly not a filing in furtherance
18 of the motion for a mediation or the Order to mediation.

19 THE COURT: Right.

20 MR. O'SHEA: Rather, McKinsey said back on
21 April 16th that it would file amended disclosures and I
22 think Ms. Gay's words were, quote:

23 "To get it exactly right."

24 Now we're dealing with a sudden switch to this use
25 of a *nunc pro tunc* tactic and we are concerned, Your Honor,

1 very concerned about McKinsey attempting to airbrush history
2 here. And even their document, which they filed before this
3 Court -- and this is Docket 1947, Your Honor, at page 4,
4 paragraph 8, said that -- and I quote from the second
5 sentence, quote:

6 "As contemplated at the April 16th hearing and in light
7 of the procedure" --
8 (Telephone conference announcement.)

9 MR. O'SHEA: Excuse me.

10 "-- and in light of the procedures contemplated by the
11 Houston disclosure protocol, McKinsey RTS files this
12 motion to confirm that they WLB Debtors and McKinsey
13 RTS will file a new application to retain McKinsey *nunc*
14 *pro tunc* to the petition date" -- and then it goes on.

15 Nothing like that ever happened on April 16th.
16 There was no discussion and no contemplation as this motion
17 falsely suggests that there was going to be a *nunc pro tunc*
18 application.

19 So in our view what the Court needs to really
20 examine and what needs to be examined is what's McKinsey up
21 to here?

22 My colleague, Judge Rhodes, asked Faith Gay twice
23 in the Meet-and-Confer, what are you really trying to gain
24 here? And was stonewalled, Your Honor, there was no real
25 Meet-and-Confer that happened at all, so we are surprised

1 here with Ms. Gay's commentary, because it's not commentary
2 or a thought process that's been shared with us.

3 I think in our view, McKinsey needs to do what the
4 Court suggested it do, either withdraw it completely or file
5 amended disclosures.

6 THE COURT: Right. But that's not what I said.
7 We just went through that about five minutes ago.

8 MR. O'SHEA: Well, Your Honor, if I'm -- what the
9 Court suggested is, you've got a choice, McKinsey. You can
10 withdraw --

11 THE COURT: No. I read the transcript. I know
12 exactly what I said.

13 MR. O'SHEA: Okay.

14 THE COURT: My words were very deliberate, and I
15 really don't appreciate because this is twice now that
16 you've mischaracterized what I said. And I want you to
17 understand that I'm a baseball fan. Do you know what
18 happens when you get three strikes? You should think about
19 that.

20 MR. O'SHEA: Well, Your Honor, if I --

21 THE COURT: Do you really want to argue with me
22 about this issue?

23 MR. O'SHEA: I'm not. I'm not, Your Honor. In
24 fact, --

25 THE COURT: But yet you are.

1 MR. O'SHEA: I'm going to apologize to you, Your
2 Honor, if I --

3 THE COURT: I don't want an apology. I want good
4 argument and I want to understand what the issues are.

5 MR. O'SHEA: Let me try again then, Judge.

6 THE COURT: Please.

7 MR. O'SHEA: If I may?

8 There's a distinction between an amendment and
9 this rare and exceptional *nunc pro tunc* process. And we do
10 not understand why McKinsey is entitled to yet again, a
11 special circumstance.

12 THE COURT: What special circumstance? All
13 they've done is ask for permission to file a pleading.

14 MR. O'SHEA: Yes, *nunc pro tunc*.

15 THE COURT: I don't have to grant it.

16 MR. O'SHEA: You don't. I'm glad to hear that
17 Your Honor is not just deferring --

18 THE COURT: Well, I don't understand why you're
19 having this argument. All they've done is said, "We want to
20 file this pleading. We want to be able to seek approval
21 back to the initiation of the case."

22 I'm not granting anything. I'm not authorizing
23 the employment. I'm not authorizing *nunc pro tunc*. I'm
24 simply saying, you can withdraw your pleading and file a new
25 one. I'm preserving everybody's rights to object to it. I

1 don't need the disclosures in 2014-1(2)(a), (b), and (c),
2 because I already know them.

3 Why are you making this harder than it needs to
4 be?

5 MR. O'SHEA: Well, maybe I don't understand, Your
6 Honor. And maybe you can help me.

7 THE COURT: I'm not here to help you.

8 MR. O'SHEA: Your Honor, I'm not looking to joust
9 with you. What I'm --

10 THE COURT: That would be good.

11 MR. O'SHEA: I'm not.

12 What we are concerned with is that we -- or that
13 our rights, as Your Honor said back on April 16th, that we
14 have rights to discovery --

15 THE COURT: I just added a paragraph that
16 preserved everything for you.

17 MR. O'SHEA: That are not circumscribed, Your
18 Honor, by just the new filing. But in fact, as Your Honor
19 knows, we filed a motion here --

20 (Telephone conference announcement.)

21 MR. O'SHEA: -- under Rule -- Federal Rule 41 --
22 Federal Rule of Civil Procedure 41, we filed an objection.
23 We want to have the entitlement to pursue the objection. We
24 want to --

25 THE COURT: You want to file an objection on an

1 withdrawn pleading?

2 MR. O'SHEA: Your Honor, we want to get -- as Your
3 Honor once said, we want to get to the bottom of this, and
4 what we want is no -- we don't want to be circumscribed in
5 the discovery that Your Honor has granted us. And we don't
6 want this *nunc pro tunc* procedure to be used essentially to
7 circumscribe our rights to inquire.

8 (Pause in the proceedings.)

9 MR. O'SHEA: So Your Honor, when we started this,
10 the question is: Are you satisfied, Mar-Bow? And the way
11 we can be satisfied is if Your Honor could give us that
12 comfort in that Order that we're glad to hear you haven't
13 ruled --

14 (Telephone conference announcement.)

15 MR. O'SHEA: -- that you haven't ruled on this and
16 you're deferring that ruling. So yes, we're happy with
17 that.

18 Secondly, if we could have some comfort that our
19 discovery will be full and complete, including going back to
20 the original filings.

21 THE COURT: All right. Anything else?

22 MR. O'SHEA: I think that's all, Your Honor.
23 Thank you.

24 THE COURT: All right. Thank you.

25 Ms. Gay, I'll give you -- or, I'm sorry,

1 Mr. Pesce. Did not mean to ignore you.

2 MR. PESCE: Very quick. Gregory Pesce, Kirkland &
3 Ellis on behalf of Westmoreland Coal Company.

4 We just wanted the Record to be complete that our
5 client is supportive of this general process as you've -- as
6 McKinsey and the Court has articulated it today.

7 And bring this matter to resolution, and my
8 colleague, Mr. Sprayregen was involved with the process that
9 led to this and wanted to convey that he's also supportive
10 of this today.

11 THE COURT: All right. Thank you.

12 MR. SPRAYREGEN: Yes, Your Honor. This is James
13 Sprayregen. Just wanted to, on behalf of the Debtors, say
14 that we're comfortable with the motion and especially about
15 changes that have been made this afternoon and that was
16 granted. We look forward to moving on to the next step of
17 this process.

18 THE COURT: All right. Thank you.

19 MR. PESCE: Thank you.

20 THE COURT: All right. I've got jurisdiction over
21 the motion, pursuant to 28 USC Section 1334. I do find that
22 the matter constitutes core proceeding under 28 USC
23 Section 157. I do find that I have the requisite
24 constitutional authority to enter a Final Order to the
25 extent that it is actually a Final Order -- and I'm not sure

1 it is. But I do have that authority if it, in fact, is a
2 Final Order.

3 I look at the motion, and again, I understand the
4 tactical war that's going on. And I'm -- I think the motion
5 has been blown way out of proportion and it has been an
6 attempt to use it for a purpose than it was otherwise
7 intended.

8 Subject to the -- I'm going to call them "tweaks"
9 that we have discussed on the Record, I'm entirely
10 comfortable with the process. I think the motion was
11 entirely appropriate, given how we got here.

12 There is an awful lot at stake. I am reminded by
13 my comments early on about exit strategies. I haven't
14 forgotten that for both of you. I hope that you-all
15 remember them, as well.

16 I don't think that I'm doing anything substantive
17 today. I'm simply teeing up the issue that I tried to tee
18 up some time ago. You know, to the extent that there is a
19 request for comfort or understanding, the process that has
20 been undertaken is not a process that I appreciate, nor is
21 it one that I am inclined to find exhibits the requisite
22 good faith that I require of all parties who come to this
23 Court and ask for relief.

24 I am going to grant the motion. It is the motion
25 filed June the 3rd, 2019, at Docket 1947, subject to the

1 submission of an Order that incorporates the changes that we
2 put on the Record.

3 What I would look to get is an Order approved as
4 to form by all the parties.

5 Again, Mr. O'Shea, I'll put on the Record that by
6 approving as to form, you are not agreeing to the relief
7 that's been granted. You are simply confirming that the
8 paper corresponds to the ruling that I have made on the
9 Record.

10 Is that clear, sir?

11 MR. O'SHEA: Yes, Your Honor. It is.

12 THE COURT: All right. Thank you.

13 Anything else we need to talk about today?

14 MS. GAY: No, Your Honor.

15 THE COURT: All right.

16 MS. GAY: Not from McKinsey RTS.

17 THE COURT: Thank you, all. Have a good weekend.

18 (Proceeding adjourned at 2:11 p.m.)

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1 I certify that the foregoing is a correct
2 transcript to the best of my ability produced from the
3 electronic sound recording of the proceedings in the above-
4 entitled matter.

5 /S/ MARY D. HENRY

6 CERTIFIED BY THE AMERICAN ASSOCIATION OF
7 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**337
8 JUDICIAL TRANSCRIBERS OF TEXAS, LLC
9 JTT TRANSCRIPT #60526
10 DATE FILED: JUNE 28, 2019

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