

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

WESTMORELAND COAL COMPANY, *et al.*,¹

Reorganized Debtors.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

**NOTICE OF FILING IN SUPPORT OF WLB DEBTORS'
APPLICATION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE RETENTION
AND EMPLOYMENT OF MCKINSEY RECOVERY & TRANSFORMATION
SERVICES U.S., LLC AND CERTAIN OF ITS AFFILIATES AS PERFORMANCE
IMPROVEMENT ADVISORS FOR THE WLB DEBTORS EFFECTIVE NUNC PRO
TUNC TO THE PETITION DATE AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that, on July 3, 2019, the *WLB Debtors' Application for Entry of an Order (I) Authorizing the Retention and Employment of McKinsey Recovery & Transformation Services U.S., LLC and Certain of Its Affiliates as Performance Improvement Advisors for the WLB Debtors Effective Nunc Pro Tunc to the Petition Date and (II) Granting Related Relief* (the "Application") was filed.

PLEASE TAKE FURTHER NOTICE that, in connection with the Application, McKinsey Recovery & Transformation Services U.S., LLC hereby files a copy of the Assessment of Proposed Professionals' Procedures to Disclose Connections in Accordance with the Houston Disclosure Protocol (the "EY Report"), which is attached hereto as **Exhibit A**.

¹ Due to the large number of debtors in these chapter 11 cases, which are consolidated for procedural purposes only, 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.

Dated: July 3, 2019
Houston, TX

Respectfully submitted,

By: /s/ Zack A. Clement

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2019, I caused the foregoing Notice to be filed with the Court and thereby served by the Court's CM/ECF noticing to all parties registered to receive electronic notice in this case.

/s/ Zack A. Clement

Exhibit A

**Assessment of Proposed Professionals'
procedures to disclose Connections in
accordance with the Houston
Disclosure Protocol**

Re: Westmoreland Coal Company

July 3, 2019



McKinsey & Company, Inc.
Report as of July 3, 2019

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1. Limitations and restrictions

EY's work and the procedures performed to date are limited in nature and scope and cannot be relied upon to have identified all information or issues that may be of relevance, and/or uncovered all potential risks. EY has not taken steps to validate or verify the information received, except where indicated. If additional procedures are performed, additional information may be identified which may impact the results of EY's work. The information contained herein is as of the report date.

The procedures described herein do not constitute a compilation, review, audit or other form of assurance in accordance with any generally accepted auditing, review or other assurance standards, of financial records or financial statements or internal controls, as those terms are defined by the American Institute of Certified Public Accountants ("AICPA"). Accordingly, EY does not express any form of assurance. Additionally, the procedures do not address the effectiveness of internal controls over financial reporting under Section 404 of the Sarbanes-Oxley Act.

The procedures described herein were performed pursuant to the AICPA Standards for Consulting Services. EY is a public accounting firm and does not provide legal advice. McKinsey & Company, Inc. should assess the potential legal issues arising from EY's work.

This report is intended solely for the information and use of McKinsey & Company, Inc., its subsidiaries, and its legal counsel, and it should not be relied upon by any other parties, and its distribution is subject to certain conditions. McKinsey & Company, Inc. may, upon notice to EY, disclose the report if legally required in connection with bankruptcy matters in which it or its affiliates have been retained without our written consent.

2. Defined terms

Unless otherwise indicated below or throughout this Report, capitalized terms have the meanings as ascribed to them in the Houston Disclosure Protocol (see Appendix A). Additional defined terms in this Report are listed below and are capitalized throughout the Report.

Client Serving Professional, or **CSP**, means a McKinsey professional that provides services to clients. Typically, services provided are consulting services directly to clients, however CSPs can also provide indirect services to clients, such as internal research for project teams.

Director of Client Service, or **DCS**, means a McKinsey Partner assigned to client projects responsible for maintaining the client relationship and the overall execution of the project. One client may have multiple DCSs for different projects.

Expanded IPL means the list of related parties, such as corporate parents or subsidiaries, to those parties identified in, and including, the Interested Party List.

GOC is the unique identification code assigned to each McKinsey office.

Houston Disclosure Protocol, or **Protocol**, is Exhibit A to McKinsey Recovery & Transformation Services U.S., LLC's Eighth Status Report in Accordance with Order on Joint Motion in Furtherance of Mediation Agreement [DKT. 1427] dated May 31, 2019 filed in the Westmoreland case, which offers recommendations and general guidelines on complex legal and business issues surrounding the disclosure obligations arising from a Proposed Professional's retention under Section 327(a) in bankruptcy cases involving more than \$50 million in claims.

Lookback Period means the three years preceding the commencement of the bankruptcy case. For the purposes of the Westmoreland bankruptcy, the Lookback Period is defined as October 9, 2015 to March 2, 2019, the confirmation date for the Westmoreland bankruptcy.

McKinsey refers to the Firm and the Proposed Professionals, including RTS and other Retained Affiliates, who are jointly implementing the Houston Disclosure Protocol recommendations and general guidelines.

McKinsey & Company or the **Firm** refers to McKinsey & Company, Inc., the parent entity of the global organization that provides management and operational support to subsidiaries, which are separate legal entities.

McKinsey Restructuring and Transformation Services U.S., LLC or **RTS** refers to the subsidiary of McKinsey & Company, Inc. that was retained by Westmoreland to provide restructuring services.

Report means the written account of EY's assessment of McKinsey's procedures to disclose connections in the Westmoreland case.

3. Background

On February 20, 2019, Westmoreland Coal Company and certain of its affiliates, as debtors and debtors in possession (collectively, "Westmoreland"), and McKinsey Recovery & Transformation Services U.S., LLC ("RTS"), entered into a joint motion to set forth a plan to enable Westmoreland to proceed with its bankruptcy case while its proposed retention of McKinsey is separately handled by the United States Bankruptcy Court for the Southern District of Texas-Houston Division (the "Bankruptcy Court").¹ Westmoreland and RTS requested the Bankruptcy Court to provide them sufficient time to (1) retain an expert to work with RTS to develop new disclosure protocols for RTS to use in Westmoreland and other bankruptcy cases, (2) file a copy of the new disclosure protocol with the Bankruptcy Court, and (3) apply such new disclosure protocols and file disclosures in the Westmoreland case.

On or around March 20, 2019, RTS entered into an Agreement for Consulting Services with D.J. (Jan) Baker, pursuant to which Mr. Baker was retained to work with RTS to develop the new disclosure protocols.²

On May 31, 2019, RTS filed a new disclosure protocol titled "Houston Disclosure Protocol" with the Bankruptcy Court.³ The Protocol "...provides general guidance regarding how Proposed Professionals may obtain information and make proper disclosures to support their retention in U.S. bankruptcy cases that are within the scope of the Protocol."⁴ The Protocol suggests that a Proposed Professional perform the following general procedures to obtain knowledge regarding potential Connections in support of its disclosures:

- (1) Obtain and review the IPL,
- (2) Establish a process (preferably utilizing computer software) to check the Proposed Professional's client database,
- (3) Distribute the IPL to Type 2, 3, and 4 AMAs and request them to report any Connections to the Proposed Professional, and
- (4) Send written inquiries (e.g., Questionnaires) to the Proposed Professional's professional personnel and Unretained Affiliates.⁵

The Protocol focuses on a Proposed Professional's disclosures regarding Connections to parties identified on the debtor's IPL which could affect the Proposed Professional's disinterestedness. The Protocol distinguishes between Direct and Indirect Connections arising from the different kinds of affiliates of the Proposed Professional.⁶ Direct Connections are generated by Retained Affiliates, and Indirect Connections are generated by Unretained Affiliates, including Asset Management Affiliates ("AMAs"). The Protocol also acknowledges that Proposed Professionals may deviate from the suggested data gathering procedures and disclosure recommendations based on the facts and circumstances of a particular matter.⁷ Therefore, the Protocol offers a Proposed Professional latitude to decide how to best implement the recommendations and general guidance set forth.

1 Case 18-35672 Document 1422 filed in the United States Bankruptcy Court Southern District of Texas Houston Division.

2 McKinsey Recovery & Transformation Services U.S., LLC's Second Status Report in Accordance with Order on Joint Motion in Furtherance of Mediation Agreement [DKT. 1427] dated March 20, 2019.

3 McKinsey Recovery & Transformation Services U.S., LLC's Eighth Status Report in Accordance with Order on Joint Motion in Furtherance of Mediation Agreement [DKT. 1427] dated May 31, 2019.

4 Houston Disclosure Protocol, Introduction (page 6).

5 Houston Disclosure Protocol, Section 7 (page 12).

6 Houston Disclosure Protocol, Sections 1-3 (pages 7-9).

7 Houston Disclosure Protocol, Introduction (page 6).

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The Protocol is a set of recommendations and general guidelines. Among those suggestions for an entity like McKinsey that does not have a software-based process to check for Connections, is to retain an independent third-party to assess the adequacy of its procedures to identify and appropriately disclose Connections in accordance with the Protocol.

In May 2019, the Firm, on behalf of RTS and other Retained Affiliates (jointly, "Proposed Professionals"), engaged EY as an independent third party to assess the adequacy of McKinsey's procedures to identify and appropriately disclose Connections in accordance with the Protocol. EY's procedures did not include an assessment of the adequacy of the recommendations and general guidance within the Protocol. A detailed discussion of McKinsey's procedures to identify and disclose Connections in its July 3, 2019 declaration to the Bankruptcy Court in the Westmoreland case (the "July 3, 2019 Declaration") and EY's related observations are set forth in the paragraphs below.

4. Summary of EY procedures performed

In connection with our engagement, EY performed procedures to gain an understanding of McKinsey's procedures to implement the recommendations and general guidelines set forth in the Protocol and to assess the adequacy of such procedures to identify and appropriately disclose Connections in the July 3, 2019 Declaration. Specifically, we performed the following procedures:

- ▶ Reviewed the Protocol to obtain background information and to understand the recommendations and general guidelines set forth therein;
- ▶ Held meetings with key individuals at McKinsey with knowledge of the implementation of the recommendations and general guidelines set forth in the Protocol and responsible for the identification of Connections to be included in the July 3, 2019 Declaration;
- ▶ Reperformed procedures to identify unique IPL Parties and extracted corporate trees from Capital IQ for a sample of entities to test completeness of the Expanded IPL;
- ▶ Reperformed procedures to identify the Proposed Professionals;
- ▶ Held discussions and interactive walkthroughs with business-line professionals responsible for the maintenance and extraction of client, vendor and banking relationship data;
- ▶ Reviewed queries run by McKinsey to extract relevant data;
- ▶ Verified that McKinsey's procedures performed covered the Lookback Period contemplated in the Protocol;
- ▶ Reviewed McKinsey's comparison of the Expanded IPL against the client, vendor and banking relationships including reperformance of a sample of searches;
- ▶ Reviewed survey and questionnaire templates, distribution lists, and a sample of responses;
- ▶ Obtained listing of Connections identified by McKinsey's AMA;
- ▶ Reviewed the Proposed Professionals' July 3, 2019 Declaration and disclosed Connections; and
- ▶ Other procedures detailed throughout the report below.

5. Executive summary

McKinsey developed and implemented adequate procedures in accordance with the recommendations and general guidelines set forth in the Protocol to identify and disclose Connections. These procedures included the review and expansion of the IPL, the identification of Direct Connections arising from the Proposed Professionals, and the identification of Indirect Connections arising from Unretained Affiliates, including AMAs.

McKinsey utilized the IPL obtained from Westmoreland's counsel, containing 4,256 IPL Parties, and elected to perform additional procedures to expand the IPL to 405,603 IPL Parties to incorporate IPL Party corporate affiliates and related parties. Expanding the IPL to include corporate parties' affiliates provides a larger number of parties that may generate Connections.

McKinsey developed adequate procedures in accordance with the Protocol to identify and appropriately disclose Direct Connections to 696 unique Interested Parties on the IPL by identifying the Proposed Professionals; gathering Proposed Professionals' client, vendor, and banking relationship information; comparing the relationship information to the Expanded IPL; and distributing and reviewing responses to the surveys to Proposed Professional Personnel. The Proposed Professionals encompass RTS and five McKinsey legal entities, or Retained Affiliates, identified based upon the GOC of client-serving professionals who provided consulting services to Westmoreland. McKinsey extracted the Proposed Professionals' client, vendor and banking relationship information from various in-house systems during the Lookback Period, and compared against the Expanded IPL to identify Connections. The outcome of this process resulted in the identification of client Connections for 623 Interested Parties, vendor Connections for 301 Interested Parties, and banking relationship Connections for 11 Interested Parties when comparing the Expanded IPL to the client list, vendor list, and list of banking relationships, respectively, and were appropriately disclosed. Directors of Client Services were surveyed to confirm whether the identified client Connection had any relation to Westmoreland, or its affiliates, of which one did and was appropriately disclosed. Additionally, McKinsey distributed the IPL and surveys to Proposed Professional Personnel to identify personal Connections, of which three did and were appropriately disclosed.

McKinsey developed adequate procedures in accordance with the Protocol to identify and appropriately disclose Direct and Indirect Connections for Interested Parties by distributing questionnaires to Proposed Professionals' and Unretained Affiliates' Client Serving Personnel inquiring whether they had Connections to the debtor and its affiliates, the U.S. Trustee, or the bankruptcy judges in the Southern District of Texas, of which three did and were appropriately disclosed.

McKinsey developed adequate procedures in accordance with the Protocol to identify and appropriately disclose Indirect Connections for Interested Parties by reporting on its AMA's Connections to the Expanded IPL, of which Indirect Connections for 125 Interested Parties were identified and appropriately disclosed.

Refer to Appendix B for a high-level, graphical depiction of McKinsey's process flow to identify and disclose Connections pursuant to the recommendations and general guidelines set forth in the Protocol.

6. Assessment of McKinsey's procedures to disclose connections

The Protocol states:

*"The Protocol distinguishes Connections arising from the different kinds of the Proposed Professional's affiliates, including: (a) Retained Affiliates, which the Protocol classifies as generating Direct Connections of the Proposed Professional, and (b) Unretained Affiliates (including AMAs), which the Protocol classifies as generating Indirect Connections."*⁸

McKinsey developed adequate procedures in accordance with the Protocol, resulting in the disclosure of Connections for 696 unique Interested Parties. These procedures include the following:

- ▶ Review and expansion of the IPL;
- ▶ Identify Direct Connections arising from the Proposed Professionals; and
- ▶ Identify Indirect Connections arising from Unretained Affiliates, including AMAs.⁹

6.1. Review and expansion of the IPL

The Protocol explicitly recommends that a Proposed Professional obtain knowledge of whether Connections exist by obtaining and reviewing a copy of the IPL from the debtor.¹⁰ The Protocol states that Proposed Professionals *"...can reasonably and in good faith rely on the list of IPL Parties."*¹¹

On May 3, 2019, McKinsey received the IPL from Westmoreland's counsel. The IPL consisted of 4,257 parties, categorized into distinct groupings including customers, directors & officers, vendors, U.S. Trustee Office, creditors, and bankruptcy judges among others. On June 10, 2019, Westmoreland's counsel amended the IPL to remove one party, reducing the number of parties to 4,256. A copy of the IPL is attached to the Proposed Professionals' July 3, 2019 Declaration as Schedule 1.

McKinsey elected to expand the IPL to include IPL affiliates ("Expanded IPL") increasing the number of parties on the IPL to 405,603. The Expanded IPL is available upon request from McKinsey's counsel.

McKinsey's procedures are adequate and aligned to the recommendations and general guidelines set forth in the Protocol.

6.1.1. Review of the IPL

Upon receiving the IPL from Westmoreland's counsel, McKinsey performed procedures to identify 3,626 unique IPL Parties from the 4,256 parties in the IPL. McKinsey's deduplication procedures were as follows:

⁸ Houston Disclosure Protocol Section 7.b. (page 1).

⁹ The procedures implemented by McKinsey as discussed throughout the Report are specific to the July 3, 2019 Declaration for the Westmoreland case.

¹⁰ Houston Disclosure Protocol, Section 1.b. (page 7).

¹¹ Houston Disclosure Protocol, Section 7.a. (page 12).

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- ▶ McKinsey used a Microsoft Excel capability¹² to identify the initial group of IPL Parties with identical names within the same category.
- ▶ McKinsey used a Microsoft Excel capability¹³ to identify an additional group of IPL Parties that had identical names, but were listed in more than one category in the IPL (e.g., an IPL Party was both a creditor and vendor). McKinsey manually reviewed these parties, and retained all Westmoreland-provided categories within the unique party.
- ▶ McKinsey performed a manual review to identify additional IPL Parties with identical names, which had minor punctuation or spelling differences.

EY reperformed the above procedures and agreed the results to the same 3,626 unique IPL Parties.

McKinsey emailed 36 Proposed Professional Personnel to confirm whether they were aware of any parties that should have been included on the IPL. McKinsey did not identify any additional parties that needed to be added to the IPL. The email template is attached hereto as Appendix C.¹⁴

McKinsey elected to perform additional procedures not explicitly recommended by the Protocol to expand the IPL to encompass IPL Parties' affiliates and related parties as further described in section 6.1.2. below.

6.1.2. Expansion of the IPL

McKinsey expanded the IPL from 3,626 unique IPL Parties to 405,603 IPL Parties to include additional IPL Party affiliates relating to corporate entities. Expanding the IPL to include corporate parties' affiliates provided a larger number of parties that may generate Connections. McKinsey expanded the IPL using the following multi-step process:

- ▶ McKinsey manually reviewed the initial IPL and categorized IPL Parties as either individuals, government entities, or corporate entities;
- ▶ McKinsey utilized Capital IQ¹⁵ to extract corporate affiliates, including subsidiaries, and investments within the corporate structure for each corporate Interested Party and its ultimate corporate parent; and
- ▶ McKinsey reviewed the ownership percentage of extracted corporate affiliates where available. An entity was deemed an affiliate and included in the Expanded IPL if a parent entity owned 20% or more of an equity stake.¹⁶ In instances where McKinsey was unable to determine the ownership percentage, McKinsey included the party in the Expanded IPL.

EY utilized Capital IQ to extract corporate affiliate trees for a sample of corporate entities on the IPL and agreed the results to parties present on McKinsey's Expanded IPL.

12 Excel provides the capability to automatically remove exact duplicates from a set of data using the "remove duplicates" functionality.

13 Excel provides the capability to highlight unique or duplicate values by using the Conditional Formatting function.

14 For purposes of the Report, EY requested that McKinsey provide the contents of the email to include as an appendix. EY reviewed the online email to confirm they matched.

15 Capital IQ is a market intelligence platform designed by Standard and Poor's ("S&P") that utilizes software and analytics to consolidate detailed company information for U.S. and international public and private companies and investment firms. Additionally, Capital IQ is a database that houses data related to corporate ownership including corporate families.

16 Corporate affiliates identified with less than 20% ownership in an IPL Party were not checked for Connections against third party data based on Section 101(2) of the Bankruptcy Code.

McKinsey utilized the Expanded IPL in its procedures to identify Direct and Indirect Connections.

6.2. Identification of Direct Connections

The Protocol explicitly recommends that a Proposed Professional obtain knowledge of whether Direct Connections exist by performing the following two procedures:

- (1) Perform a process to check such Professional's client databases for Connections.
- (2) Distribute the IPL to its Proposed Professional Personnel, request them to report any Connections (other than *de minimis* connections), and disclose in its retention application all Connections so reported.¹⁷

McKinsey developed adequate procedures in accordance with the Protocol to identify and appropriately disclose Direct Connections for 696 unique Interested Parties. McKinsey's procedures were as follows:

- ▶ Identify the Proposed Professional;
- ▶ Gather client, vendor, and banking financial information for the Proposed Professionals;
- ▶ Compare the Expanded IPL to the client, vendor and banking financial information for Connections; and
- ▶ Survey the Proposed Professional Personnel for their Connections.

6.2.1. Identify the Proposed Professional

The Protocol explicitly states that the Proposed Professional includes Retained Affiliates.¹⁸ In accordance with this definition, McKinsey identified the following six legal entities as the Proposed Professionals in the Westmoreland bankruptcy case to identify Direct Connections by analyzing the Proposed Professional Personnel who provided consulting services to Westmoreland:

- ▶ McKinsey Recovery & Transformation Services U.S., LLC;
- ▶ McKinsey & Company, Inc. United States;
- ▶ McKinsey & Company Canada / McKinsey & Compagnie Canada;
- ▶ McKinsey and Company Africa (Pty) Ltd.;
- ▶ McKinsey & Company LME Limited; and
- ▶ McKinsey Knowledge Centre India Private Limited.

McKinsey utilized the Westmoreland project code to identify the Proposed Professionals in a multi-step process:

- ▶ Ran a query within the Firm's time and expense system to identify 46 CSPs that charged hours (i.e., provided services) to the Westmoreland project code between October 9, 2018, (the Westmoreland bankruptcy petition date) and March 2, 2019 (the Westmoreland bankruptcy plan confirmation date). McKinsey & Company's professionals charge their hours worked on a bi-weekly basis to unique project codes within the Firm's time and expense reporting system. Project codes are utilized by the Firm to track professionals' working hours and to manage engagement economics and the Firm's finances. Project codes are created when a project is approved by finance and local office management within the Firm's Oracle financial system. Project details such as the client name, GOC, and Engagement Director are required to receive approval.

¹⁷ Houston Disclosure Protocol, Section 7.b. (page 12).

¹⁸ Houston Disclosure Protocol, Summary (page 1).

- ▶ Reviewed the listing of professionals who charged hours to the Westmoreland project code, and performed an additional review to identify professionals who did not charge hours but should be considered as part of the Proposed Professional Personnel. After consideration of relevant information, including consideration of client and non-client serving responsibilities, McKinsey identified 39 Proposed Professional Personnel.
- ▶ Identified the work location of the 39 Proposed Professional Personnel by reviewing each professional's GOC designation stored within the Firm's Oracle financial system. Each GOC is associated to a Firm legal entity; accordingly, McKinsey identified five McKinsey legal entities as the Retained Affiliates in addition to RTS, to make up the Proposed Professionals.

EY reviewed the query utilized to extract the Westmoreland project code data and reviewed the resulting extract. Also, EY reperformed the procedures noted above, including the review of email correspondence with the McKinsey Engagement Director for the Westmoreland engagement to arrive at the Proposed Professional Personnel and identify the five Retained Affiliates, along with RTS, to make up the Proposed Professionals.

Based on our review and reperformance of McKinsey's procedures described above, McKinsey's procedures were adequate in identifying the Retained Affiliates to be included as the Proposed Professionals as recommended by the Protocol.

Based on this identification, McKinsey utilized the Proposed Professionals' client, vendor, and banking relationship information to identify third parties with Connections to parties on the Expanded IPL.

6.2.2. Identify the Proposed Professionals' third-party relationships

As mentioned above, the Protocol explicitly recommends that the Proposed Professional perform a process to check client databases for Connections. McKinsey elected to perform additional procedures not explicitly recommended by the Protocol to also check vendor and banking relationship databases. Accordingly, McKinsey gathered client information, as well as vendor and banking relationship information from Proposed Professionals for the Lookback Period to identify third-party relationships for comparison to the Expanded IPL.

Client Relationships

McKinsey gathered Proposed Professionals' project codes during the Lookback Period to identify the Proposed Professionals' clients for comparison to the Expanded IPL. McKinsey collected the client data in a two-step process:

- ▶ Ran a SQL query using the Reporting Data Warehouse interface with the Oracle financial system to extract all project codes worked on by Client Serving Professionals from the Proposed Professionals during the Lookback Period. The Firm-wide client data is maintained by the Finance department within its Oracle financial system database, which maintains all client and project-related data.
- ▶ Ran a SQL query using the Reporting Data Warehouse interface to extract all project codes assigned to project offices belonging to each the Proposed Professionals during the Lookback Period.

EY held discussions with Firm personnel knowledgeable about client data and the systems used firm-wide to store client information. Also, EY reviewed the queries ran to extract the client data, which were reasonable to identify the relevant data to check for Connections during the Lookback Period.

McKinsey combined the two project code lists resulting in a total population of 28,539 project codes comprised of 9,978 unique clients for comparison against the Expanded IPL.

Vendor Relationships

McKinsey gathered Proposed Professionals' vendor relationship information during the Lookback Period for comparison to the Expanded IPL.

The Firm-wide vendor data is maintained by the Finance department within its Oracle financial system database. The database maintains invoice line level data and general ledger accounting details. This database is updated daily with an automated feed from the Oracle payment data. McKinsey's Oracle financial system tags vendor payments to the legal entity submitting the payment.

McKinsey utilized the Alteryx Designer¹⁹ platform to extract vendor data from the database for the Proposed Professionals. McKinsey ran a SQL query to extract all payments made to vendors during the Lookback Period, based on payment date, by the Proposed Professionals. The extract included details such as vendor name, payment date, invoice type, and legal entity making the payment.

In some cases, payments are made to vendors without an associated invoice. Such payments include rent payments, law firm or consulting firm retainer payments, and utility payments among others. For payments made to vendors without an associated invoice, internal invoices are created and loaded as payment support with the underlying payee listed, which would be captured in the vendor listing.

EY held discussions with Firm personnel knowledgeable about vendor data and the systems used firm-wide to store vendor information. EY reviewed the queries ran to extract the vendor data, which were reasonable to identify the relevant data to check for Connections during the Lookback Period.

McKinsey identified 40,615 unique vendors for comparison against the Expanded IPL.

Banking Relationships

McKinsey gathered the Proposed Professionals' banking relationship information during the Lookback Period for comparison to the Expanded IPL.

McKinsey's banking relationship information, including all bank accounts (e.g., checking, savings),²⁰ is contained within its Kyriba²¹ database maintained by the Firm's Corporate Treasury department. When a new banking relationship is established or when an existing bank account is closed, the Corporate Treasury team based in the United States is involved in the process and updates Kyriba with the necessary details. Local offices and McKinsey legal entities review the global list of bank accounts annually.

McKinsey collected the banking relationship data in a multi-step process:

- ▶ Extracted all open and closed bank accounts by directly exporting the Kyriba data to Microsoft Excel, which yielded 1,154 unique bank accounts. This extract included details for each bank account including the legal entity that controls the account, the financial institution managing the account, account opening date, and account closing date, if applicable.
- ▶ Manually filtered within Microsoft Excel the account listing by legal entity to focus on the accounts held by the Proposed Professionals, resulting in 81 distinct accounts.
- ▶ Manually searched the listing to identify unique bank names as a single financial institution may manage multiple accounts, which resulted in 27 banks identified for comparison against the Expanded IPL.

¹⁹ Alteryx Designer is a software platform that allows the user to process large volumes of data when accessing the vendor payment database.

²⁰ EY was advised that there are no other types of accounts at financial institutions for Proposed Professionals.

²¹ Kyriba is a treasury management cloud-based solution which delivers cash management technology on a global scale. The database stores information relating to account balances, transactions, as well as supporting documentation as accounts are opened and closed.

EY held discussions with Firm personnel knowledgeable about firm banking relationships and the systems used firm wide to store banking information. EY reviewed the process to extract the banking relationships data, which was reasonable to identify the relevant data to check for Connections during the Lookback Period.

McKinsey identified 27 unique banking relationships for comparison against the Expanded IPL.

6.2.3. Compare Expanded IPL to third parties with connections to the Proposed Professionals

McKinsey identified client Connections for 623 Interested Parties, vendor Connections for 301 Interested Parties, and banking relationship Connections for 11 Interested Parties when comparing the Expanded IPL to the client list, vendor list, and list of banking relationships, respectively, and were appropriately disclosed.

Utilizing the listing of clients, vendors, and banking relationships, McKinsey performed the following procedures:

- ▶ Compared the Expanded IPL to the listing of clients, vendors, and banking relationships. McKinsey leveraged keyword searches to expedite its review; however, the actual comparison process was substantively a manual process to compare names between the relevant lists.
- ▶ The manual comparison process included researching publicly available information to identify whether a potential match was the same as the party on the Expanded IPL. In instances where McKinsey was unable to determine whether a potential match was the same party, McKinsey included the party as a potential match.
- ▶ Consolidated all client names and related project codes, vendor names, and financial institution names for confirmed matches, resulting in client Connections for 623 Interested Parties, vendor Connections for 301 Interested Parties, and banking connections for 11 Interested Parties.

McKinsey surveyed 977 Directors of Client Service via email to confirm whether the project(s) associated with the client matches, to the best of their knowledge, was in any way related to Westmoreland. Surveys included a listing of relevant projects and the list of Westmoreland Coal Company and its debtor affiliates for their review. If the Partner answered yes, the survey asked them to describe how the services were related to Westmoreland. McKinsey developed a process to intake survey responses as well as a process to disclose additional information on client relationships. The survey template is attached hereto as Appendix D.²²

EY reviewed McKinsey's comparison of the Expanded IPL to the client, vendor, and banking listings, and reperformed a sample of searches for instances where Connections were identified and not identified. Additionally, EY reviewed the survey template for surveys distributed to the identified Director of Client Service Partners, and reviewed a sample of responses to confirm McKinsey had a reasonable process to review identified Connections arising from the survey related to Westmoreland.

Based on our review and reperformance of McKinsey's procedures described above, McKinsey's procedures were adequate in checking McKinsey's client, vendor, and banking databases for Connections.

²² For purposes of the Report, EY requested that McKinsey provide the content of the survey template, including references to the mandatory fields and instructions, to include as an appendix. EY reviewed the online survey to confirm they matched.

6.2.4. Survey of Proposed Professional Personnel

The Protocol explicitly recommends that the Proposed Professional distribute the IPL to its Proposed Professional Personnel and request them to report any Connections (other than *de minimis* connections) to the Proposed Professional.²³ In accordance with this recommendation, McKinsey identified three Connections by distributing surveys to Proposed Professional Personnel.

McKinsey distributed the IPL and surveys via email to 36 active Proposed Professional Personnel identified within section 6.2.1.²⁴ The survey recipients were asked to identify any connections, other than their professional client relationships through McKinsey, with any entity, person, or any person employed by any entity on the IPL, which McKinsey provided as an attachment to the survey and to the email communication. The Proposed Professional Personnel survey template is attached hereto as Appendix E.²⁵

McKinsey received responses from all currently employed survey recipients. If the survey recipient identified a connection(s), the survey asked the recipient to describe the nature of such connection(s). McKinsey reviewed the responses to determine whether the response identified a Connection(s).

EY reviewed the survey template and the survey distribution list that was sent to the list of Proposed Professional Personnel. Additionally, EY sampled responses to further review that McKinsey had a reasonable process to review identified Connections arising from the surveys.

Based on our review of McKinsey's procedures described above, McKinsey's procedures were adequate in checking the Proposed Professional Personnel's Connections.

6.3. Identification of Connections

The Protocol explicitly recommends that a Proposed Professional obtain knowledge of whether Connections exist by performing the following procedures:

- (1) Distribute questionnaires to Proposed Professional's professional personnel and Unretained Affiliates controlled by the Proposed Professional inquiring of their (i) known equity or debt investments in the debtor (e.g., excluding Third-Party Managed Investments); and (ii) other connections or relationships with the debtor (other than the Proposed Professional's proposed engagement), the Bankruptcy Court judges, or United States Trustee personnel,²⁶ and
- (2) For other than Type 1 Financial Organization or a Proposed Professional with Type 1 AMAs, distribute the IPL to its Type 2, 3 and 4 AMAs, request them to report any Connections (other than *de minimis* connections) to the Proposed Professional, and disclose its retention application all Connections so reported.²⁷

McKinsey developed adequate procedures in accordance with the Protocol to identify and appropriately disclose Connections. McKinsey's procedures were as follows:

23 Houston Disclosure Protocol, Section 7.b. (Page 13).

24 McKinsey identified a total of 39 professionals as survey recipients. However, three professionals are no longer McKinsey employees; accordingly, McKinsey distributed the IPL and surveys to 36 professionals.

25 For purposes of the Report, EY requested that McKinsey provide the content of the survey template, including references to the mandatory fields and instructions, to include as an appendix. EY reviewed the online survey to confirm they matched.

26 Houston Disclosure Protocol, Section 7.c. (Page 13).

27 Houston Disclosure Protocol, Section 7.b. (page 12).

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- ▶ Distribute questionnaires to Proposed Professionals' and Unretained Affiliates' Client Serving Personnel for Connections.
- ▶ Distribute Expanded IPL to MIO Partners Inc. ("MIO"), and reviewed and disclosed MIO's reported Connections.

6.3.1. Direct and Indirect Connections arising from questionnaires to Proposed Professionals' and Unretained Affiliates' Client Serving Personnel

In accordance with the above recommendation noted in the Protocol, McKinsey identified three Connections for Interested Parties with Proposed Professionals' and Unretained Affiliates' Client Serving Personnel through reviewing results of distributed questionnaires. McKinsey elected to survey all Firm Client Serving Personnel, and did not limit the distribution to subsidiaries or affiliates controlled by the Proposed Professionals as suggested in the Protocol.

McKinsey created the questionnaire in accordance with Exhibit B of the Protocol. Proposed Professionals' and Unretained Affiliates' Client Serving Personnel were asked to disclose the following:

- ▶ Any holdings in either debt or equity securities of the debtor, as well as the existence of any other claims against the debtor;
- ▶ Connections to the United States Trustee for the Southern District of Texas; and
- ▶ Connections to any of the Bankruptcy Judges for the Southern District of Texas.

McKinsey sent questionnaires via email to all 17,966 Client Serving Professionals located globally, inquiring of connections to the parties listed in the questionnaire. The Firm's Human Resources department extracted the distribution list of all Client Serving Professionals globally by querying the Firm's Human Resources system for professionals categorized as having a Client Serving Professional-type role (e.g., Partner, Associate Partner, Manager, Associate, etc.). The Proposed Professionals' and Unretained Affiliates' Client Serving Personnel questionnaire template is attached hereto as Appendix F.²⁸

Proposed Professionals' and Unretained Affiliates' Client Serving Personnel were required to respond to the questionnaire if they had any such connection to report. If the questionnaire recipients identified a connection(s), the survey asked the recipient to describe the nature of such connection(s). McKinsey reviewed the responses to determine whether the response identified a Connection(s).

EY reviewed the questionnaire template and the questionnaire distribution list that was sent to the list of Proposed Professionals' and Unretained Affiliates' Client Serving Personnel. Additionally, EY sampled responses to further review McKinsey had a reasonable process to review identified Connections arising from the questionnaire responses.

Based on our review of McKinsey's procedures described above, McKinsey's procedures were adequate in checking the Proposed Professionals' and Unretained Affiliates' Client Serving Personnel's Connections as recommended in the Protocol.

6.3.2. Indirect Connections arising from Asset Management Affiliates

The Protocol explicitly recommends that a Proposed Professional obtain knowledge of whether Indirect Connections arising from an AMA exist by performing the following two procedures:

²⁸ For purposes of the Report, EY requested that McKinsey provide the content of the survey template, including references to the mandatory fields and instructions, to include as an appendix. EY reviewed the online survey to confirm they matched.

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- (1) *"A retention application for a Proposed Professional (other than a Type 1 Financial Organization) with a Type 2 AMA should disclose known (i) Direct Connections of the Proposed Professional, and (ii) Immediate Indirect Connections of its Type 2 AMA, in each case other than de minimis connections. Disclosure of known Immediate Indirect Connections (other than de minimis connections) of a Type 2 AMA will consist of identifying the IPL Parties, if any, to which the Type 2 AMA has Immediate Indirect Connections, if and as reported by the Type 2 AMA to its related Proposed Professional. A Proposed Professional with a Type 2 AMA should provide the IPL to its Type 2 AMA, and request its Type 2 AMA to inform it of known Immediate Indirect Connections (other than de minimis connections) to IPL Parties for potential disclosure in the Proposed Professional's retention application pursuant to this Protocol..."*²⁹
- (2) *"A Proposed Professional should set forth in its retention application the results reported to the Proposed Professional from its AMA's (if applicable) search with respect to IPL Parties (including any alternative processes or rationale for omission thereof)."*³⁰

Based on the recommendations and general guidelines set forth within the Protocol, McKinsey determined that its affiliate, MIO, is a Type 2 AMA; accordingly, McKinsey identified and disclosed Indirect Connections to 125 Interested Parties through review of a report received from its AMA.

McKinsey determined that MIO is a Type 2 AMA as defined by the Protocol. Accordingly, as set forth by the Protocol for a Type 2 AMA, McKinsey provided the IPL to MIO for MIO to identify and report Connections to IPL Parties. Although not specifically required in the Protocol, McKinsey also provided the Expanded IPL to MIO to facilitate MIO's search for Connections to Interested Parties. A copy of the report issued by MIO to McKinsey to report Connections to the Expanded IPL is attached to the Proposed Professionals' July 3, 2019 Declaration as Schedule 3.

Based on our understanding that MIO is a Type 2 AMA, McKinsey's procedures were adequate in identifying and disclosing Connections arising from AMAs.

29 Houston Disclosure Protocol, Section 5.c. (Page 11).

30 Houston Disclosure Protocol, Section 7.d. (Page 13).

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7. Assessment of July 3, 2019 Declaration

Overall, the processes implemented by McKinsey on behalf of the Proposed Professionals, as described throughout the Report, to identify Connections disclosed in the Proposed Professionals' July 3, 2019 Declaration to the Bankruptcy Court in the Westmoreland case were adequate and consistent with the recommendations and general guidelines set forth in the Protocol. Additionally, McKinsey elected to perform additional procedures not explicitly recommended in the Protocol.

EY reviewed the Proposed Professionals' July 3, 2019 Declaration and confirmed that Connections for Interested Parties identified through the process implemented by McKinsey were disclosed therein.

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Appendix A - Houston Disclosure Protocol

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)

**MCKINSEY RECOVERY & TRANSFORMATION SERVICES U.S., LLC'S
EIGHTH STATUS REPORT IN ACCORDANCE WITH ORDER ON JOINT MOTION
IN FURTHERANCE OF MEDIATION AGREEMENT [DKT. 1427]**

¹ Due to the large number of debtors in these chapter 11 cases, which are consolidated for procedural purposes only, 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 proposed 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.

EIGHTH STATUS REPORT

1. McKinsey Recovery & Transformation Services U.S., LLC (“RTS”) submits this eighth status report in accordance with the procedures set forth in the joint motion filed on February 20, 2019 by RTS and Westmoreland Coal Company and certain of its debtor affiliates, Dkt. 1422 (“Motion”), and so-ordered by this Court on February 21, 2019, Dkt. 1427, at ¶¶ 1, 3.

2. RTS agreed to “report back to the Court within two weeks of the entry of the order contemplated by this motion” and to “file a status report every two weeks thereafter.” *See* Mot. at ¶¶ 5(a) & 6.

3. On March 6, 2019, RTS filed its initial status report, naming D.J. (Jan) Baker as the expert that RTS planned to retain to work with it to develop a new disclosure protocol. *See* Dkt. 1586. Two weeks later, on March 20, 2019, RTS filed a second status report attaching Mr. Baker’s consulting agreement. Dkt. 1626, Ex. A. On April 3, 2019, RTS filed a third status report informing the Court that it had retained Mr. Paul Singerman to serve as a “fresh eyes” expert to review the draft protocol. Dkt. 1686. RTS attached Mr. Singerman’s consulting agreement to the Third Status Report. *Id.* at Ex. B. On April 17, 2019, RTS filed a fourth status report reporting that RTS anticipates filing a proposed final version of the disclosure protocol by the end of May and updated disclosures in accordance with that protocol by July 3, 2019. *See* Dkt. 1759, at ¶ 6. On May 1, May 15, and May 29, 2019, RTS filed a fifth, sixth, and seventh status report, in each case confirming these deadlines and describing the additional protocol drafting progress made by Mr. Baker and Mr. Singerman to date. *See* Dkt. 1803, at ¶¶ 4-5; Dkt. 1842, at ¶¶ 4-5; Dkt. 1894, at ¶¶ 4-6.

4. As noted in the Seventh Status Report, Mr. Baker and Mr. Singerman spent this week continuing to refine the protocol. Consistent with the deadline set out in RTS's previous status reports, the final protocol is attached to this status report as **Exhibit A**.

Dated: May 31, 2019
Houston, TX

Respectfully submitted,

By: /s/ Faith E. Gay

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2019, I caused the foregoing pleading to be filed with the Court and thereby served by the Court's CM/ECF noticing to all parties registered to receive electronic notice in this case.

/s/ Zack A. Clement

Exhibit A

HOUSTON DISCLOSURE PROTOCOL

Summary

The following Houston Disclosure Protocol addresses the complex legal and business issues surrounding the disclosure obligations arising from a Proposed Professional's retention under Section 327¹ in bankruptcy cases involving more than \$50 million in claims. The Protocol addresses Proposed Professionals of varying types, including law, accounting, financial advisory, and investment banking firms, that seek compensation from a bankrupt estate. A Schedule of Defined Terms immediately follows this Summary, and capitalized terms used in this Summary and in the Protocol have the meanings ascribed to them there. This Summary outlines the Protocol's disclosure recommendations and the means or process to satisfy them.

The Protocol focuses on a Proposed Professional's disclosure regarding Connections to parties that could affect the Proposed Professional's "disinterestedness" and contemplates that the debtor will create and maintain an Interested Party List to facilitate identification of Connections (Exhibit "A" to the Protocol addresses the IPL). The Protocol recommends that a Proposed Professional obtain the data to support disclosure of Connections by procedures that include, as applicable, a computerized search of client databases, distribution of a questionnaire (a proposed form of which is provided in Exhibit "B" to the Protocol), and inquiry of the Proposed Professional's AMAs (if any), as discussed below. While recognizing that a Proposed Professional bears the burden of adequate disclosure in its retention application and an Estate Professional bears that burden in all appropriate supplemental disclosures, the Protocol provides that disclosure of Connections should be based on a Proposed Professional's actual knowledge of them, including from the results of a computer search and questionnaire process, as applicable.

The Protocol distinguishes Connections arising from the different kinds of the Proposed Professional's affiliates, including: (a) Retained Affiliates, which the Protocol classifies as generating Direct Connections of the Proposed Professional, and (b) Unretained Affiliates (including AMAs), which the Protocol classifies as generating Indirect Connections. As set forth in the Protocol, the disclosure of known Connections and the process to obtain knowledge of them should vary in accordance with the characteristics of each Proposed Professional and its AMAs and other Unretained Affiliates.

The Protocol classifies AMAs into 4 Types and recommends a process to obtain and disclose information regarding Connections that varies based on the extent to which the AMA: (i) is subject to Securities Registration, Regulatory Oversight, and/or Independent Personnel and Management; (ii) refrains from investing directly in Named Issuers; and (iii) accepts investment funds from third parties rather than Related Investors. The Protocol recommends that: (a) Proposed Professionals that qualify as Type 1 Financial Organizations or have Type 1 AMAs disclose only Direct Connections known to the Proposed Professional without review of the IPL by an AMA; (b) Proposed Professionals with Type 2, 3 or 4 AMAs should also disclose Direct Connections known to the Proposed Professional; (c) Proposed Professionals with Type 2 AMAs should also disclose the names of IPL Parties with Indirect Connections known to the Type 2 AMA as reported by the Type 2 AMA to the Proposed Professional; (d) Proposed Professionals

¹ This Protocol does not address retention applications filed by claims and noticing agents under 28 U.S.C. § 156.

with Types 3 and /or 4 AMAs should disclose Indirect Connections known to the AMA(s) and reported to the Proposed Professional, including direct investments in Named Issuers that are IPL Parties, and (e) Proposed Professionals with Type 4 AMAs should make such additional disclosures, if any, as may be appropriate in the circumstances.

The Protocol recognizes that disclosure of Connections may vary in response to, *inter alia*, the size of the bankruptcy case and should exclude *de minimis* matters. The *de minimis* concept is applicable to both the IPL and the disclosure of Connections in a Proposed Professional's retention application. *De minimis* exclusions can be based, for example, on the small value of a claim, the small ownership percentage and value of an equity interest, or other, similar considerations. An IPL, and a Proposed Professional's disclosure of Connections in its retention application, should state the criteria applied in making *de minimis* exclusions.

DEFINED TERMS

AMA means an affiliate or division of a Proposed Professional that is actively engaged in managing or owning financial investments. For clarity, AMA does not refer either to assets that might be held through investment vehicles or to such investment vehicles, e.g., mutual funds, but does refer to the entity managing such investment vehicles, i.e., a mutual fund manager.

CFTC means the Commodities Futures Trading Commission.

Connection means, in the context of Section 327 and Rule 2014, an association or relationship with an IPL Party that a reasonable person might find bears on whether the Proposed Professional “holds or represents an interest adverse to the estate” and is “disinterested” under Section 327 and Section 101(14), based on the facts of a particular bankruptcy case.

De minimis means a matter too distant in time, remote in probability, or insignificant to warrant consideration in the context of a particular bankruptcy case.

Direct Connection means a known Connection between a Proposed Professional and an IPL Party (other than an Indirect Connection).

Estate Professional means a Proposed Professional whose retention has been approved by the Bankruptcy Court.

FINRA means the Financial Industry Regulatory Authority.

Immediate Indirect Connection means a known Connection between an IPL Party and a Proposed Professional’s Unretained Affiliate (including an AMA).

Independent Personnel and Management means, with respect to an AMA of a Proposed Professional, the employment or engagement of management, professional and other personnel separate from those of such Proposed Professional, (e.g., excluding the Proposed Professional’s active employees from the AMA’s management, so that only independent directors/managers or professionals that are not active employees of (or that have retired from) the related Proposed Professional serve on the AMA’s board of directors (or other equivalent governing body)).

Indirect Connection means an Immediate Indirect Connection or a Remote Indirect Connection.

Information Barriers means policies and procedures of a referenced entity (including but not limited to policies and procedures adopted in compliance with Rule 10b5-1) that seek reasonably to ensure that (a) such entity’s investment decisions not violate the laws prohibiting trading on the basis of MNPI, and (b) Proposed Professional Personnel have no participation in or knowledge concerning investment decisions made by the Proposed Professional or its affiliates.

Interested Party List or **IPL** means a list of parties with Connections to the debtor’s estate (other than *de minimis* connections).

IPL Parties means the persons or parties listed on an IPL.

MNPI means material non-public information.

Named Issuers means an issuer of debt or equity securities (including a municipality), including parties that could become a debtor in a bankruptcy case.

NFA means the National Futures Association.

Other Regulatory Oversight means examination by any federal, state or foreign regulatory authority regarding compliance with regulatory requirements, other than Regulatory Oversight.

Proposed Professional means a professional person or entity proposed to be retained in connection with a pending bankruptcy case under Section 327. As used in this Protocol, the term “Proposed Professional” includes Retained Affiliates.

Proposed Professional Personnel means the primary working group within a Proposed Professional entity that directly provides the services for which the Proposed Professional is retained in the particular bankruptcy case, and excludes personnel that only episodically provide such services.

Regulatory Oversight means periodic regulatory examinations by the SEC, FINRA, or the NFA.

Related Investors means, with respect to a Proposed Professional, the Proposed Professional’s current and former ultimate beneficial owners, employees and their immediate family members.

Remote Indirect Connection means a known Connection arising from a relationship between a Proposed Professional’s Unretained Affiliate (including an AMA) and a third party, which third party, in turn, has a Connection with an IPL Party.

Retained Affiliates means those affiliates of a Proposed Professional that employ professional personnel for whom the Proposed Professional will seek compensation pursuant to Section 330 of the Bankruptcy Code.

Rule 10b5-1 means 17 C.F.R. 240.10b-5.

Rule 2014 means Federal Rule of Bankruptcy Procedure 2014.

SEC means the United States Securities and Exchange Commission.

Section 101(14) means 11 U.S.C. § 101(14).

Section 327 means 11 U.S.C. § 327.

Securities Registration means, with respect to a referenced entity, such entity’s registration (and attendant regulation) as an investment advisor by the SEC, as a securities broker/dealer by FINRA, or under the requirements of the CFTC.

Survey means the Summary of Industry Affiliate Investment Disclosures. *In re: Westmoreland Coal Co.*, Case No. 18-35672 (Bankr. S.D. Tex.), ECF No. 1659-1 pp. 2-66.

Third-Party Managed Investments means investments (including through mutual funds and other investment vehicles) that are managed by third parties with delegated investment authority and discretion.

Type means one of the four (4) types of AMAs that are classified in this Protocol.

Type 1 AMA means an AMA that either:

- A. (i) employs Information Barriers, (ii) is subject to both Securities Registration and Regulatory Oversight, and (iii) obtains most or all of its assets under management from third parties (i.e., parties other than Related Investors); or
- B. qualifies under the criteria provided in subsections (A)(i) and (ii), above, but obtains most or all of its assets under management from Related Investors and not from third parties, and also insulates its personnel and management by means of Independent Personnel and Management.

Type 2 AMA means an AMA that: (i) qualifies under the criteria provided in subsections (A)(i) and (ii) in the definition of Type 1 AMA, above; (ii) obtains most or all of its assets under management from Related Investors and not from third parties; (iii) does not make direct investments in Named Issuers but only, if at all, holds investments in Named Issuers as Third-Party Managed Investments; and (iv) does not have Independent Personnel and Management.

Type 3 AMA means an AMA that: (i) employs Information Barriers; (ii) is subject to either: (A) Regulatory Oversight, or (B) Other Regulatory Oversight; (iii) obtains its assets under management from Related Investors or third parties; and (iv) may make direct investments in the debt or equity of Named Issuers, whether or not it also holds such investments as a result of Third-Party Managed Investments.

Type 4 AMA means an AMA not qualifying as a Type 1, Type 2 or Type 3 AMA.

Type 1 Financial Organization means a Proposed Professional, including an investment banking or similar institution (including a financial advisor affiliated with an investment bank), that has Information Barriers and other characteristics of and would therefore qualify as a Type 1 AMA. A Type 1 Financial Organization retains its classification as such even if it does not have assets under management. A Type 1 Financial Organization also retains its classification as such notwithstanding that it may include affiliates of other Types (e.g., Type 3 AMAs engaged in insurance activities, and Type 4 AMAs acting in various capacities in ownership and/or management of investment assets).

Unretained Affiliate means an affiliate of a Proposed Professional other than a Retained Affiliate.

Introduction

Rule 2014 requires disclosure of connections between a Proposed Professional and certain parties in interest in bankruptcy cases. None of Rule 2014, Section 327, or the decisional law construing any of them provides Proposed Professionals (and Estate Professionals) and in particular, those having an AMA, any clear guidance regarding adequate disclosure of their AMA's connections with parties in interest in a bankruptcy case. This Protocol: (a) suggests definitions for a Connection requiring disclosure and categorizes such Connections; (b) classifies AMAs within four Types; (c) differentiates the disclosure of Connections recommended for the four Types of AMAs; (d) discusses knowledge of Connections and the means to obtain it; and (e) addresses confidentiality concerns and requirements for updating disclosure of Connections.

This Protocol does not endeavor to and could not effectively provide definitive guidance to all Proposed Professionals in all circumstances. Proposed Professionals range from sole practitioners or single office practices to complex international firms with thousands of professionals and multiple AMAs of various Types. Proposed Professionals may similarly be subject to a wide range of regulation, including self-regulatory rules and standards governing legal and accounting professionals, and Securities Registration and/or Regulatory Oversight to which financial advisory and investment banking firms may be subject. Proposed Professionals also are subject to a broad range of consequences for violation of the respective rules, regulations and laws that govern them, including license suspension or loss, enforcement under Securities Registration and/or Regulatory Oversight, and potential civil and criminal liabilities for misuse of MNPI. This Protocol therefore provides general guidance regarding how Proposed Professionals may obtain information and make proper disclosures to support their retention in U.S. bankruptcy cases that are within the scope of this Protocol, but this Protocol does not provide specific guidance for all Proposed Professionals, regardless of their type, size and structure, or in all bankruptcy cases, regardless of their size, scope, or operative facts. This Protocol recognizes that a Proposed Professional may deviate from its suggested data gathering procedures and disclosure recommendations based upon its particular facts and circumstances. No such deviation, *per se*, however, should support a contention that a Proposed Professional is not disinterested or that its retention should not be approved.

A Proposed Professional bears the burden of making appropriate disclosure of Connections in its initial retention application and an Estate Professional bears a continuing burden to supplement that disclosure as appropriate in the circumstances. This Protocol proposes a framework for disclosure of Connections by Proposed Professionals, Estate Professionals, and their affiliates in bankruptcy cases involving more than \$50 million in liabilities.

Connection should be broadly defined to respect the term's ordinary meaning and accomplish the important purposes of Rule 2014 and Section 327 to ensure that a Proposed Professional is a "disinterested person" as defined in Section 101(14). Section 327's primary functions include: (a) allowing the estate to obtain and retain expertise to fulfill its essential functions; (b) requiring disclosure of matters that might affect Estate Professionals' performance of their duty of loyalty; and (c) maintaining the integrity of the bankruptcy process and promoting the parties' and the public's confidence in that integrity. Section 327 requires that Proposed Professionals "not hold or represent an interest adverse to the estate" and are "disinterested persons." Section 101(14)(c) requires that a disinterested person "not have an

interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in the debtor, or for any other reason.” Rule 2014 disclosure is intended to provide the Bankruptcy Court and parties in interest in a bankruptcy case with information adequate to evaluate whether a Proposed Professional is a disinterested person and qualified to serve under Section 327.

The definition of Connection and Rule 2014’s related disclosure obligations should not impair an effective evaluation of disinterestedness by requiring disclosure of every possible connection, no matter how *de minimis*. Further, Rule 2014 disclosure should not impractically require disclosure of unknown information or ignore valid confidentiality concerns.

The formulation of this Protocol has been informed by the Survey. The Survey reflects that, in the absence of any definition of Connection and disclosure guidelines, Proposed Professionals have adopted widely disparate practices governing disclosure of Connections, even among similarly situated Proposed Professionals. This Protocol was further informed by the results of telephonic interviews conducted with representatives of more than a dozen separate professional firms with significant Chapter 11 experience, who expressed their willingness to discuss (for themselves and not as an expression of their firm’s policies or procedures), in a candid, off-the-record context and not for attribution in the Protocol, disclosure issues arising from the retention application process. This Protocol provides guidance to Proposed Professionals regarding such disclosures.

1. Description of Connections

a. **Requirement of Disclosure.** Rule 2014 requires disclosure of the Connections of the “person to be employed,” and Section 101(14) refers to “direct or indirect relationships,” but neither Rule 2014 nor related decisional law addresses whether Indirect Connections (i.e., Connections created by affiliates of a Proposed Professional) must be disclosed.

b. **Interested Parties and Interested Party List.** In order to facilitate a Proposed Professional’s disclosure of Connections, the debtor, in consultation with its outside restructuring counsel, should prepare and make an Interested Party List (or IPL) available to all Proposed Professionals. If a Proposed Professional believes that the then-current IPL should be amended, such Proposed Professional should so advise the debtor’s counsel. If no IPL has been prepared when a Proposed Professional files its retention application, the retention application should disclose that fact and explain how the Proposed Professional identified Connections. Exhibit “A” to this Protocol includes an IPL template, as well as guidelines for a debtor’s consideration in preparing an IPL in light of the particular facts and circumstances of a bankruptcy case.

c. **Retained Affiliates.** A Proposed Professional should: (i) seek retention (and include the identity) of Retained Affiliates in its retention application; and (ii) ensure that its retention application discloses all known Connections (other than *de minimis* connections) among IPL Parties and such Retained Affiliates.

d. **Protocol Organization.** Paragraph 2 provides for certain disclosures relating to Immediate Indirect Connections. Paragraph 6 addresses what constitutes knowledge in connection with preparing retention application disclosures. Paragraph 8 discusses confidential treatment for Connections and IPL Parties in certain circumstances.

e. ***De Minimis Exclusions.*** Effective disclosure in large bankruptcy cases requires reasonable exclusion of *de minimis* connections and parties that should not qualify as IPL Parties (e.g., small creditor, vendor, customer exclusions, and investments falling below a threshold), as described on Exhibit “A.” Section 101(14)(c)’s reference to “material” supports excluding *de minimis* connections. For instance, a Proposed Professional may determine that an equity investment in an IPL Party of less than 1% of the outstanding equity or debt (with a value the Proposed Professional determines to be *de minimis*) need not be disclosed. Each IPL and each Proposed Professional’s retention application that excludes *de minimis* parties or connections should state the criteria, based on the facts and circumstances of the case (commonly, a dollar and/or percentage amount) applied to make such exclusions from disclosure.

f. **Disclosure under this Protocol.** Subject to *de minimis* exclusions as set forth herein, this Protocol recommends:

(i) A Proposed Professional (including Retained Affiliates) should disclose all known Direct Connections, and also disclose all Indirect Connections known to its Unretained Affiliates (including AMAs) and reported to it. Except as otherwise provided in this Protocol (including in Paragraph 8 regarding confidentiality), disclosed Connections should be identified by name and adequately described.

(ii) A Proposed Professional should obtain knowledge of Connections through its new matter intake process, by computer database searches, questionnaires and otherwise as described in this Protocol.

(iii) A Proposed Professional should disclose whether it has any AMAs, and if it does, it should describe such AMAs’ classification by Type as provided for in this Protocol, including (as applicable) such AMAs’: (A) Information Barriers; (B) Related Investors; (C) practices regarding direct investments in Named Issuers and/or through Third-Party Managed Investments; (D) Independent Personnel and Management; and (E) Regulatory Oversight and/or Other Regulatory Oversight.

(iv) A Proposed Professional that does not qualify as a Type 1 Financial Organization or have a Type 1 AMA, and does have one or more Type 2, 3 and/or 4 AMAs, should provide the IPL to such Type 2, 3 and/or 4 AMAs and request the AMAs to report Indirect Connections to the Proposed Professional as provided in this Protocol (including enhanced disclosure for Type 3 and 4 AMAs).

2. **Indirect Connections**

a. **Requirement of Disclosure.** Immediate Indirect Connections should be disclosed, as bearing upon whether the Proposed Professional “holds or represents an interest adverse to the debtor,” including Immediate Indirect Connections of: (i) Unretained Affiliates (as disclosed pursuant to an applicable questionnaire process), and (ii) Type 2, 3 and 4 AMAs (as disclosed in response to the distribution of the IPL), all as discussed below.

b. **Remote Indirect Connection.** The Survey reflects that Remote Indirect Connections are not generally disclosed, likely because Proposed Professionals have no knowledge of them. This Protocol recommends disclosure of a Remote Indirect Connection (other than a *de minimis* connection) only if the Proposed Professional has knowledge thereof. A

Proposed Professional's retention application should disclose the potential existence of unknown Remote Indirect Connections with IPL Parties. A Proposed Professional is not required to conduct procedures other than those set forth in this Protocol to identify Remote Indirect Connections.

3. Indirect Connections through Asset Management Affiliates

a. **AMA Disclosure.** When a Proposed Professional (including, without limitation, a law, accounting, financial advisory or investment banking firm) has an Unretained Affiliate that is an AMA, additional disclosure may be required to explain the AMA's Connections and their impact, if any, on the Proposed Professional's disinterestedness. That additional disclosure should also describe whether the AMA accepts funds from third parties or Related Investors, and whether the AMA makes direct investments in the debt or equity securities (i.e., buys or sells short, long, option or other positions) of Named Issuers or holds investments in Named Issuers through Third-Party Managed Investments, or both. Based on the Survey, many Proposed Professionals do not identify such AMAs individually by name, but rather identify them descriptively and generically. This Protocol does not intend to change that practice. The description of such AMAs should categorize them by reference to the applicable "Types" described below. Most Proposed Professionals (in common with most employers) maintain 401(k) programs and support various other pension and/or other retirement account programs for their employees' benefit as Third-Party Managed Investments and without using an AMA; such arrangements do not trigger any requirement for analysis as an AMA under this Protocol.

b. **Material Non-Public Information; Regulation and Oversight.** Proposed Professionals, Estate Professionals and their respective AMAs frequently possess MNPI and often implement Information Barriers to address this. These entities may also be subject to regulation and oversight, including Securities Registration and/or Regulatory Oversight.

c. **AMA Classification.** This Protocol identifies four Types of AMAs (Types 1, 2, 3 and 4) and proposes corresponding disclosure requirements for each Type. If a Proposed Professional believes its AMA has characteristics of more than one Type, its retention application should discuss these characteristics and include disclosure applicable to the higher numbered Type (e.g., an AMA with characteristics of both a Type 3 and Type 4 AMA should make the disclosure required for a Type 4 AMA). If a Proposed Professional believes its AMA should be classified differently from these Types, its retention application should discuss this and include disclosure most appropriate to such AMA.

d. **Change in AMA Type.** An AMA's classification can change over time. For example: a Type 4 can qualify as a Type 3 by implementing Information Barriers and becoming subject to Regulatory Oversight or Other Regulatory Oversight; a Type 3 can qualify as a Type 2 by becoming subject to Securities Registration (and, if applicable, Regulatory Oversight rather than Other Regulatory Oversight) and holding investments in Named Issuers only as Third-Party Managed Investments; and a Type 2 can become a Type 1 by implementing Independent Personnel and Management. With respect to each bankruptcy case in which a Proposed Professional files a retention application, however, the Proposed Professional should classify its AMA(s) (as a Type 1, 2, 3 or 4) based on the AMA's characteristics when the Proposed Professional files its initial retention application in such case, and this classification should remain in effect throughout the course of such case (i.e., the same classification should apply to

an Estate Professional's updated retention application disclosures). Accordingly, the same AMA of a Proposed Professional may be classified differently in different bankruptcy cases, based on its characteristics at the time that the Proposed Professional files its initial retention application in the different bankruptcy cases.

4. Disclosures Relating to Type 1 Financial Organizations and Type 1 AMAs

a. **Present Type 1 Financial Organization and Type 1 AMA Disclosure.** The Survey indicates that a retention application for a Proposed Professional qualifying as a Type 1 Financial Organization or having an AMA that this Protocol categorizes as a Type 1 AMA commonly discloses only Direct Connections known to the Proposed Professional Personnel because its Information Barriers, Securities Registration and Regulatory Oversight fully protect MNPI, and insulate the Proposed Professional Personnel from any effects that MNPI could potentially create with respect to the Proposed Professional's disinterestedness. Such Proposed Professional Personnel generally have no knowledge of (and therefore the Proposed Professional does not disclose) debt or equity investments in IPL Parties because of the effectiveness of the Information Barriers applicable to communication and misuse of MNPI and insulating Proposed Professional Personnel from participation in or knowledge of investment decisions.

b. **Proposed Type 1 Financial Organization and Type 1 AMA Disclosure.** This Protocol proposes that the disclosures of Connections in a retention application of a Proposed Professional qualifying as a Type 1 Financial Organization or having a Type 1 AMA may properly be limited to identifying the names (subject to confidentiality considerations) of Direct Connections (other than *de minimis* connections) known to such Proposed Professional in reliance on the presumed effectiveness of Information Barriers. Such named entities should ordinarily be described as "a current or former client, but with respect to matters unrelated to the Debtor," absent facts or circumstances that require enhanced disclosure. Bankruptcy Courts have consistently approved retention applications based upon such disclosures.

5. Disclosures relating to Type 2, 3 and 4 AMAs

a. **Present Type 2, 3 and 4 AMA Disclosure.** The Survey indicates that retention applications for a Proposed Professional with an AMA that this Protocol categorizes as a Type 2, 3, or 4 AMA include increased disclosures because: (i) such a firm accepts most or all of its investments from Related Investors; (ii) a Type 3 AMA may be subject only to Other Regulatory Oversight (and may not be subject to any Securities Registration); (iii) a Type 4 AMA may not be subject to regulatory examinations or Securities Registration at all; and (iv) a Type 3 or 4 AMA may make direct investments in Named Issuers, rather than investing exclusively through Third-Party Managed Investments.

b. **Considerations for Type 2 AMA Disclosures.** A Proposed Professional with an AMA that this Protocol categorizes as a Type 2 AMA could credibly contend that its disclosure obligations in respect of its Type 2 AMA should be the same as the disclosure obligations in respect of Type 1 AMAs because its Type 2 AMA protects MNPI by means of the same Information Barriers enforced by the same Securities Registration and Regulatory Oversight as those that apply to Type 1 AMAs. In addition, a Type 2 AMA refrains from direct investments in Named Issuers, and a Type 1 AMA may make direct investments in Named Issuers. Nonetheless, this Protocol recommends increased disclosure by a Proposed Professional with a Type 2 AMA in order to advance the purposes of (i) protecting public confidence in the integrity

of the restructuring process, and (ii) ensuring an absence of self-dealing because a Type 2 AMA obtains most or all of its funds under management from Related Investors and may be managed and controlled by active professional personnel that also manage and control the related Proposed Professional (rather than utilizing Independent Personnel and Management).

c. **Proposed Type 2 AMA Disclosure.** A retention application for a Proposed Professional (other than a Type 1 Financial Organization) with a Type 2 AMA should disclose known (i) Direct Connections of the Proposed Professional, and (ii) Immediate Indirect Connections of its Type 2 AMA, in each case other than *de minimis* connections. Disclosure of known Immediate Indirect Connections (other than *de minimis* connections) of a Type 2 AMA will consist of identifying the IPL Parties, if any, to which the Type 2 AMA has Immediate Indirect Connections, if and as reported by the Type 2 AMA to its related Proposed Professional. A Proposed Professional with a Type 2 AMA should provide the IPL to its Type 2 AMA, and request its Type 2 AMA to inform it of known Immediate Indirect Connections (other than *de minimis* connections) to IPL Parties for potential disclosure in the Proposed Professional's retention application pursuant to this Protocol, including Paragraph 6, below, regarding knowledge.

d. **Proposed Type 3 AMA Disclosure.** A retention application for a Proposed Professional (other than a Type 1 Financial Organization) with a Type 3 AMA should contain enhanced disclosure that reflects (i) such AMA's Regulatory Oversight or Other Regulatory Oversight, as applicable; and (ii) the extent of any Securities Registration applicable to such AMA. Such retention application disclosure should also address how, if at all, these characteristics of its AMA could cause any potential impairment to the Proposed Professional's perceived or actual disinterestedness. Because Type 3 AMAs may make direct investments in Named Issuers, the disclosures required from such a Proposed Professional with a Type 3 AMA should disclose known Indirect Connections (other than *de minimis* connections) between the Type 3 AMA and IPL Parties including those arising from any such direct investments in Named Issuers that appear in the IPL, in each case as reported by the Type 3 AMA to its related Proposed Professional.

e. **Proposed Type 4 AMA Disclosure.** A retention application for a Proposed Professional (other than a Type 1 Financial Organization) with a Type 4 AMA should contain enhanced disclosure that sets forth the Securities Registration, Regulatory Oversight and/or Other Regulatory Oversight (or lack thereof) applicable to the Proposed Professional. Such retention application disclosure should also address how, if at all, these characteristics of its AMA could cause any potential impairment to the Proposed Professional's perceived or actual disinterestedness. If the applicable Type 4 AMA makes direct investments in Named Issuers, the disclosures required from such a Proposed Professional with such Type 4 AMA should disclose known Indirect Connections (other than *de minimis* connections) between the Type 4 AMA and IPL Parties, including those arising from any such direct investments in Named Issuers that appear in the IPL, in each case if and as reported by the Type 4 AMA to its related Proposed Professional. The disclosures required in a retention application of a Proposed Professional with a Type 4 AMA should be informed by the disclosure provided with respect to other categories of AMAs and supplemented as appropriate based on the facts and circumstances applicable to the particular AMA and bankruptcy case.

6. Disclosure Based on Actual Knowledge

The disclosure obligations of a Proposed Professional under this Protocol derive from the Proposed Professional's knowledge of Connections (other than *de minimis* connections), including the knowledge of Connections of a Proposed Professional's AMAs (if any) which the AMA may report to the Proposed Professional. In the case of Type 2, 3 and 4 AMAs with only Third-Party Managed Investments, disclosure of investments in Named Issuers included in the IPL Parties that such managers may make from time to time would be impractical because of, *inter alia*, the frequency of trading in such positions, and the AMA's limited knowledge thereof (if any). To be sure, Proposed Professionals cannot disclose unknown Connections, and this Protocol does not suggest that they do so. Instead, this Protocol provides procedures to obtain such knowledge. For purposes of this Protocol, a Proposed Professional's knowledge of Connections means actual knowledge derived from its new matter intake process and the results of the Proposed Professional's: (a) computer client database check (as described in Paragraph 7, below); (b) any applicable inquiry of its professional personnel (and Unretained Affiliates other than AMAs) by a questionnaire process or otherwise (also as described in Paragraph 7, below); (c) review of the report it receives of its AMA's (if applicable) check for conflicts and Connections (or any other applicable) process; and (d) review of any other process for its Unretained Affiliates (if any, and other than an AMA). All references to "knowledge" in this Protocol refer to actual knowledge. As discussed in Paragraph 7(e), below, if a Proposed Professional limits its retention application disclosure to the knowledge of Proposed Professional Personnel, that limitation should be disclosed in the retention application. A retention application of a Proposed Professional with knowledge of Direct Connections or Indirect Connections with IPL Parties (other than *de minimis* connections), should disclose all such Connections. In addition, if a Proposed Professional has knowledge of a Connection (other than a *de minimis* connection) with a person not included in the IPL, such Connection should be disclosed.

7. Determination of Whether a Connection Exists

Proposed Professionals should obtain knowledge of whether Connections exist generally by following the procedures discussed below, subject to adaptations to disclose particular circumstances affecting a particular Proposed Professional and bankruptcy case. Each retention application for a Proposed Professional should describe the process and procedures it utilized to obtain knowledge of Connections.

a. **Interested Party List.** Subject to Paragraph 6 of this Protocol regarding knowledge, Proposed Professionals can reasonably and in good faith rely on the list of IPL Parties, consistent with the description and template attached as Exhibit "A," prepared (and periodically updated, with information derived from the debtor's bankruptcy schedules and otherwise, as described in Exhibit "A" and in Paragraph 10, below) by the debtor.

b. **Process to Check for Conflicts and Connections.** Every Proposed Professional should perform (in connection with its other new matter intake procedures) a process to check such Proposed Professional's client databases for conflicts and Connections with IPL Parties. A Proposed Professional should utilize a process designed to identify Connections adequately in the context of the size and organizational complexity of the Proposed Professional. For entities

with a significant number of professionals, this process often utilizes computer software.¹ For Proposed Professionals with a large number of professionals, this Protocol recommends deployment of adequate software within a reasonable time. Pending such deployment, a Proposed Professional may retain an independent third party to assess the adequacy of the alternative procedures the Proposed Professional uses to identify and appropriately disclose Connections.

A Proposed Professional (other than a Type 1 Financial Organization or a Proposed Professional with Type 1 AMAs) should distribute the IPL to its Type 2, 3 and 4 AMAs, request them to report any Connections (other than *de minimis* connections) to the Proposed Professional, and disclose in its retention application all Connections so reported. In addition, a Proposed Professional should distribute the IPL to its Proposed Professional Personnel, request them to report any Connections (other than *de minimis* connections) to the Proposed Professional, and disclose in its retention application all Connections so reported.

c. **Questionnaires.** A Proposed Professional should disclose in its retention application the results from written inquiries of the Proposed Professional's professional personnel (as distinguished from staff, support or administrative personnel), and (to the extent, if any, appropriate) Unretained Affiliates (if any) controlled by the Proposed Professional regarding: (i) their known equity or debt investments in the debtor (e.g., excluding Third-Party Managed Investments); and (ii) other connections or relationships with the debtor (other than the Proposed Professional's proposed engagement), the Bankruptcy Court judges, or United States Trustee personnel. Exhibit "B" to this Protocol presents a sample questionnaire. Particularly for Proposed Professionals organized in complex global structures, Exhibit "B" may require substantial modification, or a different (or even no) approach to seeking this information from certain of its professional employees and affiliates may be appropriate.

d. **AMA's Report.** A Proposed Professional should set forth in its retention application the results reported to the Proposed Professional from its AMA's (if applicable) search with respect to IPL Parties (including any alternative processes or rationale for omission thereof).

e. **Type 1 Financial Organizations and Type 1 AMAs.** As discussed above, Type 1 Financial Organizations and Type 1 AMAs are subject to Information Barriers that not only protect against misuse of MNPI but also insulate Proposed Professional Personnel from participation in or knowledge concerning investment decisions. Accordingly, it may be appropriate for such Proposed Professionals to obtain knowledge of Connections from their new matter intake procedures and computer client database reviews and base their disclosures on the knowledge of their Proposed Professional Personnel derived therefrom, without using questionnaires (other than directed to its Proposed Professional Personnel) or other procedures.

8. Confidentiality Considerations

If a Connection (or the identity of an IPL Party) that should be disclosed under this Protocol is subject to confidentiality considerations and the Proposed Professional seeks not to disclose the Connection or the name of the IPL Party, the following steps should be taken:

¹ Law firms generally use proprietary software licensed from vendors, while financial advisory firms more typically develop such software themselves or through third-party consultants.

a. **Description in IPL.** The Connection (or IPL Party) should be described (but not identified) in sufficient detail to permit informed decisions concerning the Proposed Professional's "disinterestedness" (as defined in Section 101 (14));

b. **Identity Filed Under Seal.** The party seeking to preserve confidentiality with respect to IPL Parties or Connections may file a motion for leave to file the identity of the confidential party under seal under Rule 9018, Federal Rules of Bankruptcy Procedure, on notice to the Office of the U.S. Trustee, the Debtor, any official committee, the holders of the 20 largest claims against the Debtor, any party that has requested notice pursuant to Rule 2002, Federal Rules of Bankruptcy Procedure, any applicable local rule, and all other parties entitled to notice of motions of this type under orders of the Bankruptcy Court in the Debtor's bankruptcy case. If the Bankruptcy Court enters an order granting such relief, in whole or in part, the party obtaining such relief should proceed in accordance therewith; and

c. **Access to Sealed Information.** Subject to the provisions of any particular Bankruptcy Court's sealing order, any party in interest, including the United States Trustee, may ask the Bankruptcy Court for permission to review (or for their counsel to review) the sealed information, and the party seeking access to the information bears the burden of proof regarding such request. The Bankruptcy Court order granting such access may protect the information's continuing confidentiality. *See, e.g.,* Order Authorizing Evercore Group L.L.C. To File Under Seal Certain Confidential Information Related to Evercore's Retention Application, *In re: Jones Energy, Inc., et al.*, Case No. 19-32112 (Bankr. S. D. Tex.), ECF No.210.

9. Look-back Period and Diligence

a. **Time Period.** A Proposed Professional should disclose Connections during the three years preceding the commencement of the bankruptcy case unless the circumstances reasonably warrant a longer period. For example, if a Proposed Professional represented a party in interest in a leveraged buy-out of the debtor eight years before the petition date, the Connection should be disclosed. Conversely, if a Proposed Professional represented a creditor of the debtor in a matter unrelated to the debtor four years before the petition date, no disclosure of that connection should be required.

b. **Additional Processes.** A Proposed Professional (and AMAs and other Unretained Affiliates) may, but should not be required to, conduct a process or procedure to identify Connections in addition to those set forth in this Protocol.

10. Updates

A Proposed Professional, once retained, has ongoing disclosure obligations. The debtor has the continuing obligation to update the IPL. This Protocol recommends that a debtor update, file and serve the IPL in a manner that clearly identifies changes thereto from prior versions no less frequently than every 90 days, including in connection with the filing of the debtor's schedules and statements, the passage of the claims bar date, the commencement of adversary proceedings, and filings under Bankruptcy Rule 2019 or by prospective purchasers of the debtor's assets. Estate Professionals should supplement their Rule 2014 disclosures, to the extent necessary as a result of updated IPLs and other developments in the bankruptcy case, including by reason of newly discovered or inadvertently omitted Connections. Without limiting Estate Professionals' obligations relating to prompt disclosure of known Connections, Estate

Professionals may maintain continuing compliance with their supplemental disclosure obligations under Rule 2014 by updating their disclosures in accordance with this Protocol within a reasonable time after the debtor's filing of updated IPLs, to the extent required as a result thereof.

EXHIBIT A TO HOUSTON DISCLOSURE PROTOCOL³

³ Defined terms used and not otherwise defined in this Exhibit have the meanings ascribed to them in the Protocol.

GUIDELINES AND TEMPLATE FOR INTERESTED PARTY LIST

“Interested Parties List” or “IPL” means a list of people and entities, grouped into categories of their Connections, identified by name, and prepared to assist Proposed Professionals in complying with disclosure obligations under Rule 2014. The debtor, with the assistance of its outside restructuring counsel, should compile the initial IPL as part of due diligence leading up to the bankruptcy filing. An IPL categorizes each IPL Party in accordance with the nature of the Connection it has with the debtor, parties associated with the debtor (e.g., current directors, executive officers and debt and equity holders), and other IPL Parties (e.g., vendors, customers, contract, lease and litigation counterparties). Proposed Professionals rely on the IPL to provide the names of parties to review for possible Connections. In bankruptcy cases involving issuers of public debt or equity securities, it may be most efficient to construct the IPL using commercially available databases that offer exact legal names of entities and their affiliates.

An IPL may be both broader and narrower than the persons or entities the debtor lists in schedules and statements of financial affairs. An IPL (and updates to it as provided for in the Protocol) should include, without limitation, members of official committees, proposed purchasers of the debtor’s assets, and other Estate Professionals, none of which may appear in the debtor’s schedules and statements. An IPL may exclude *de minimis* potential IPL Parties that the debtor’s schedules and statements will include. Particularly in larger cases, the debtor’s schedules and statements may not be available before a Proposed Professional files its retention application. Accordingly, an IPL that the debtor makes available may form the best source of this information available to a Proposed Professional filing its retention application early in the bankruptcy case.

As set forth in the Protocol, a debtor should change and update the IPL during the course of a bankruptcy case, at intervals no less than 90 days, to reflect changing facts and circumstances in the case, including new developments, as well as to cure inadvertent omissions. Updates should reflect, among other things, the matters, events and circumstances addressed in the template provided below.

EXHIBIT "A"

IPL TEMPLATE

In its initial compilation of the IPL, the debtor should consider including the following categories of parties with Connections, as applicable:

- Debtor(s)
- Debtor affiliates and subsidiaries
- Current and former officers and directors (within the last 3 years)
- Affiliates of current and former officers and directors
- Significant equity holders (more than 5%)
- Prepetition lenders / noteholders
- Prepetition Indenture trustees / agents
- Initial DIP lenders
- U.S. Bankruptcy Court Judges serving in the District (as updated, only the Bankruptcy Judge presiding over the bankruptcy case will remain an IPL Party)
- U.S. District Court Judges for the applicable district
- U.S. Trustee (for the applicable region) and Staff Attorneys and Trial Attorneys in the District in which the case is filed
- Top 50 unsecured creditors
- Identified bankruptcy professionals
- Ordinary course professionals
- Contract counter-parties (other than *de minimis*)
- Vendors / suppliers (other than *de minimis*)
- Customers (other than *de minimis*)
- Competitors (other than *de minimis*)
- Landlords and lease counter-parties (other than *de minimis*)
- Licensees and licensors (including under intellectual property rights) (other than *de minimis*)
- Utility companies (other than *de minimis*)
- Litigation counter-parties (other than *de minimis*)
- Regulatory agencies / governmental bodies
- Taxing authorities (other than *de minimis*)
- Labor unions
- Depository banks (other than *de minimis*)
- L/C issuers
- Lien claimants
- Insurance providers and agents
- Surety bonds and surety providers
- Other IPL Parties significant to the bankruptcy case, and not included above.

The parameters for excluding *de minimis* parties from the IPL depend on the facts and circumstances of each particular bankruptcy case. In each category appropriate for *de minimis* exclusions, the debtor should consider a practical *de minimis* limitation so that category will contain only IPL Parties that bear on a Proposed Professional's disinterestedness. The IPL should

disclose the dollar amount, percentage amount or other criteria (e.g., limiting equity holders to thresholds based on value and percentage interest) chosen for *de minimis* exclusions in each applicable category.

Updates

As set forth in the Protocol, the IPL is a dynamic document, and a debtor should change and update the IPL during the course of a bankruptcy case. The debtor should update the IPL no less frequently than every 90 days to reflect changing facts and circumstances, new developments, and information learned during the bankruptcy case, as well as to cure inadvertent omissions. After the filing of the bankruptcy case, the IPL should be updated to include additional IPL Parties identified in:

- The debtor's schedules and statements (including any amendments)
- Proofs of Claim
- Notices of appearance
- Adversary proceedings and other motions or applications
- Filings by prospective purchasers of debtor's assets, plan proponents and under Bankruptcy Rule 2019
- Appointments of official committees and retention of Estate Professionals

EXHIBIT B TO HOUSTON DISCLOSURE PROTOCOL

Exhibit B
Form of Questionnaire

Urgent Request for Information

THIS IS AN URGENT REQUEST FOR INFORMATION THAT REQUIRES YOUR IMMEDIATE ATTENTION AND RESPONSE IF YOU HAVE ANY INFORMATION TO REPORT OR MATTERS TO DISCLOSE. YOUR FAILURE TIMELY TO RESPOND WILL CONSTITUTE YOUR AFFIRMATION THAT YOU HAVE NO INFORMATION TO REPORT OR MATTERS TO DISCLOSE. IF YOU WOULD SELECT OPTION #1 TO EACH OF THE THREE QUESTIONS BELOW, YOU NEED NOT RESPOND TO THIS QUESTIONNAIRE. THANK YOU IN ADVANCE FOR YOUR PROMPT ASSISTANCE.

(Name of Proposed Professional) represents (or is applying for Bankruptcy Court authorization to represent) **(name of entity)** and its affiliates listed below (collectively, the “**Debtors**”) or (the Official Committee of Unsecured Creditors) (or other applicable official committee or party; as the case may be, the “**Client**”) in their (recently filed) (contemplated) chapter 11 bankruptcy cases in the United States Bankruptcy Court for the _____ District of _____.

As an advisor to the Client, there are several types of disclosures that we must make in order for the Bankruptcy Court to approve retention of our firm. Most of the information required to be disclosed can be obtained from the databases and conflicts records our firm maintains. That process is underway. A limited amount of information, however, may most efficiently be obtained directly from professionals employed by our firm and affiliates of our firm who receive this Questionnaire (collectively, the “**Questionnaire Recipients**”). This request relates to the second type of material listed above, which is why you are being contacted. The specific disclosures that we are required to make are listed below.

First, we must disclose to the Bankruptcy Court presiding over the Debtors' cases any holdings by the Questionnaire Recipients in either the debt or equity securities of the Debtors (e.g., excluding any investments, whether held through mutual funds or other investment vehicles, that are managed by third parties with delegated investment authority and discretion; “**Third-Party Managed Investments**”), as well as the existence of any other claims against the Debtors held by any Questionnaire Recipient.

Second, we must disclose to the Bankruptcy Court whether any Questionnaire Recipient has any connections to the United State Trustee or any person employed in the Office of the United States Trustee for the _____ District of _____.

Third, we must disclose to the Bankruptcy Court whether any Questionnaire Recipient has any connections to any of the Bankruptcy Judges for the _____ District of _____.

Please respond to this email no later than [_____ , 20 _____] at noon EST:

1. Debt or Equity Securities, or Other Claims Against the Debtors.

Please indicate by replying to this email whether you, on or after [90 days prior to the date of this questionnaire] have owned or held a beneficial interest in any debt or equity securities (other than Third Party Managed Investments) of, or claims against, any of the Debtors. **To reply, review the options listed below and (electronically check the appropriate box) (select the appropriate button at the top of this message).**

Option #1 -- I have not held and do not hold debt or equity securities of, or other claims against, any of the Debtors.

Option #2 -- I have held but no longer hold debt or equity securities (other than Third-Party Managed Investments) of, or other claims against, any of the Debtors.

Option #3 -- I currently hold debt or equity securities (other than Third-Party Managed Investments) of, or other claims against, one or more of the Debtors. (If selecting this option, please describe in your reply the type of debt or equity securities that you hold, the name of the issuer, and/or the nature of any claim that you may hold or assert. To do this, select "Edit the response before sending" option to enter your comments.)

2. Connections to the United States Trustee or any Person Employed by the Office of the United States Trustee for the _____ District of _____.

The names of the United States Trustee and employees in the office of the United States Trustee for the _____ District of _____ are listed below.

To reply, review the options listed below and (electronically check the appropriate box) or (select the appropriate button at the top of this message).

Option #1 - I have no connections to the United States Trustee or to anyone employed in the office of the United States trustee for the _____ District of _____

Option #2 - I have the following connections to the United States trustee or to someone employed in the office of the United States Trustee for the _____ District of _____. (If selecting this option, please describe in your reply the connections that you have to the United States Trustee or to anyone employed in the office of the United States

Trustee for the _____ District of _____. To do this, select "Edit the response before sending" option to enter your comments.)

3. **Connections to any Bankruptcy Judges in the _____ District of _____.** The names of the Bankruptcy Judges in the _____ District of _____ are listed below.

To reply, review the options listed below and (electronically check the appropriate box) or (select the appropriate button at the top of this message).

Option #1 - I have no connections to any of the Bankruptcy Judges for the _____ District of _____.

Option #2 - I have the following connections to a Bankruptcy Judge for the _____ District of _____ (If selecting this option, please describe in your reply the connections that you have to a Bankruptcy Judge for the _____ District of _____). To do this, select "Edit the response before sending" to enter your comments).

(Insert "Edit Response Before Sending" option at appropriate point to facilitate electronic response)

If you have any questions concerning this urgent request for information, please call (_____) at (_____) - _____.

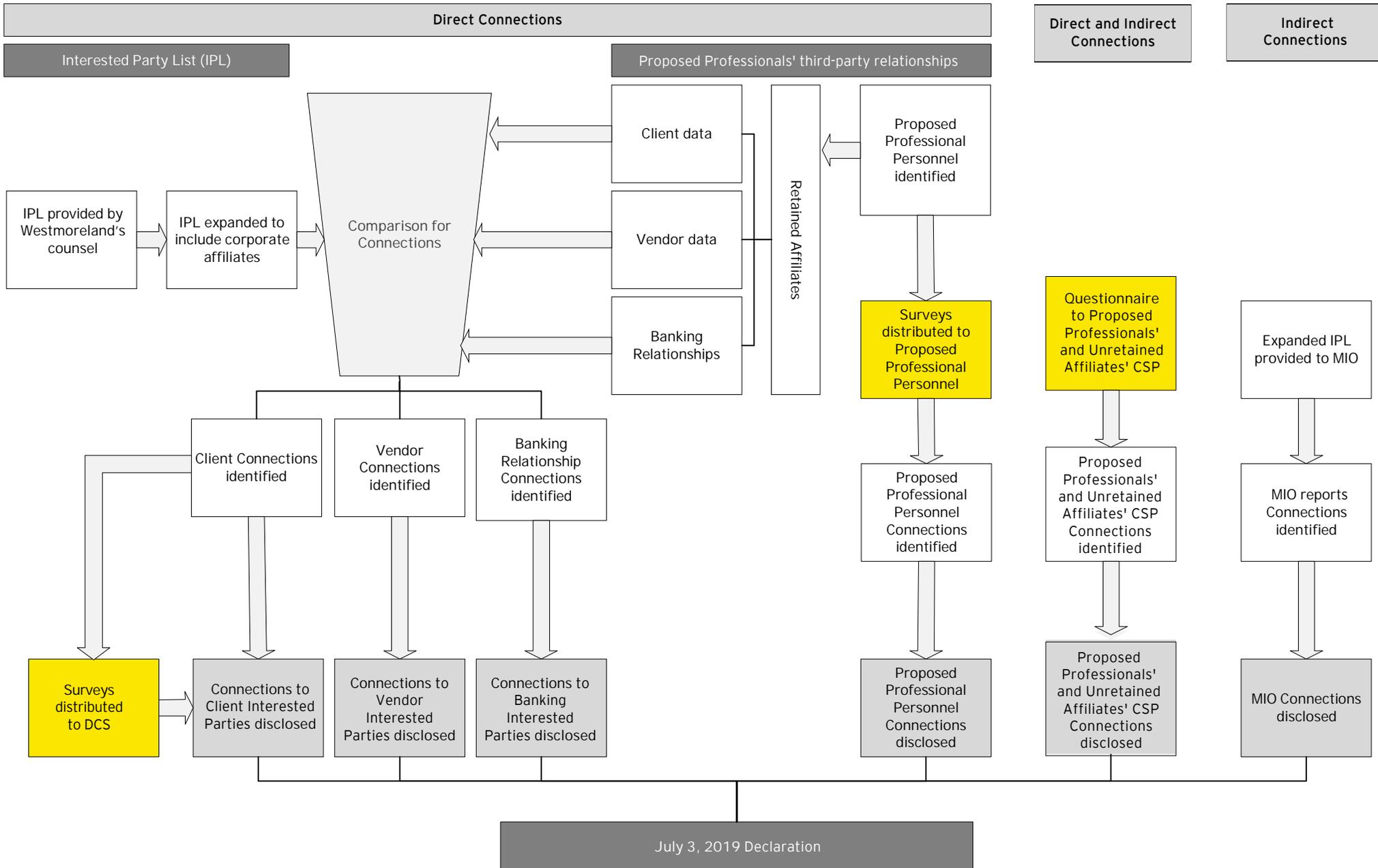
THANK YOU VERY MUCH FOR YOUR PROMPT ATTENTION TO THIS MATTER

List of [_____] Debtors:

(Each Debtor entity)

McKinsey & Company, Inc.
Report as of July 3, 2019

Appendix B - McKinsey Process Flow to Disclose Connections



McKinsey & Company, Inc.
Report as of July 3, 2019

Appendix C - Additional IPL Parties Email

EMAIL TEMPLATE

From: Westmoreland RTS

Subject: [IMPORTANT] Westmoreland Legal Disclosures: Additional Question

Dear Colleague,

You are receiving this email because you have been identified as a member of the team providing services to Westmoreland Coal Company. You previously reviewed the Westmoreland interested parties list in connection with your responses to earlier surveys (please find the list attached). Thank you for your prior response(s). This survey asks a different question.

Question: Are you aware of any person or entity not included on the list that you think should have been included because it was an interested party in Westmoreland's bankruptcy (for example, because it is or was a creditor of, or has or had some other business connection to, Westmoreland, Westmoreland's assets, or the work being performed by the Westmoreland team)?

- If your response is **YES**, please reply to this email as soon as possible, and no later than **5:00 pm Eastern on Monday, July 1**, and provide the names of the missing persons or entities.
- If your response is **NO**, you do not need to respond to this email.

Thank you.

McKinsey & Company, Inc.
Report as of July 3, 2019

Appendix D - DCS Survey

EMAIL TEMPLATE

From: McKinsey RTS Legal Disclosure
Subject: [MASTER CLIENT] – Response Required by June 19 – Important Legal Disclosure Obligations

This email requires your response by June 19, 2019. You may receive multiple survey requests – this is by design to capture all information. Please complete each request. We appreciate your time in completing this survey.

CONFIDENTIAL

Dear [DCS First Name],

You are receiving this email in connection with McKinsey RTS's recent engagement by Westmoreland Coal Company and its affiliates listed below during their Chapter 11 bankruptcy, and a submission that RTS is required to file with the U.S. Bankruptcy Court by July 3, 2019 for that engagement. That submission must contain disclosures, including RTS and certain of its affiliates' connections with entities previously identified as parties in interest to Westmoreland in the bankruptcy case.

The submission will be a public filing and will include [MASTER CLIENT], and the related [MASTER CLIENT] entities listed below, in the list of Firm clients that are, or are an affiliate of, a party in interest. Provided the work was not related to Westmoreland, the disclosure will be limited to listing the client's name, among a list of hundreds of Firm clients, with no further detail. In the event the work was related to Westmoreland, we will need more information to evaluate further and to draft the relevant disclosure. We will be notifying the client of the disclosure as described below.

In the event revenues associated with a client exceed certain thresholds, we also will disclose that fact. We are undertaking an analysis to determine which, if any, clients meet such a threshold and will reach out to the relevant DCSs in advance of such disclosure.

You were identified as leading or having led a CST providing services to [MASTER CLIENT] on the engagements provided in the link below. If you do not have enough information about your designated engagements to complete the survey, please discuss with your colleagues who can provide you this information and then complete the survey.

Please find the list of engagements that require your review here – [\[LIST OF ENGAGEMENTS\]](#)

In case you require the names of the engagements listed above, please reach out to westmoreland_rts@mckinsey.com.

The link to the survey is provided as a separate link below. For completeness, we request a response from each DCS by June 19, 2019.

Standardized Legal Notice to Client: Unless you check the appropriate box in the survey link below, Firm Legal will send a standardized notice of the disclosure either to the client contact specified in the relevant client consulting agreement or to the client's general counsel. If you would like to send this notice yourself, would prefer to provide the appropriate client legal contact for the notification, or have already given notice to your client in connection with McKinsey's first round of Westmoreland disclosures, please check the appropriate box in the survey and provide the name, email and title of the recipient and indicate if you will contact them, already have contacted them, or would like to use the listed name as the recipient of the notice from Firm Legal. Below is a sample email if you are reaching out yourself.

Please find the survey link here – [\[LINK TO SURVEY\]](#)

Contacts for Questions

If you have questions, please review the FAQ provided through this link: [LINK TO FAQ](#)

Should you have any further questions please reach out to westmoreland_rts@mckinsey.com.

If you are having any technical issues filling out this survey, please contact the [Global Helpdesk](#).

Thanks in advance for your help.

- - - -

Westmoreland Affiliates	
Absaloka Coal LLC	Westmoreland Canadian Investments, LP
Basin Resources Inc.	Westmoreland Coal Co. Asset Corp
Buckingham Coal Co. LLC	Westmoreland Coal Sales Co. Inc.
Dakota Westmoreland Corporation	Westmoreland Energy LLC
Daron Coal Co. LLC	Westmoreland Energy Services Inc.
Harrison Resources LLC	Westmoreland Energy Services New York Inc.
Haystack Coal Co.	Westmoreland Kemmerer Fee Coal Holdings LLC
Oxford Conesville LLC	Westmoreland Kemmerer LLC
Oxford Mining Co. - Kentucky LLC	Westmoreland Mining LLC
Oxford Mining Co. LLC	Westmoreland North Carolina Power LLC
Prairie Mines & Royalty ULC	Westmoreland Partners
San Juan Coal Co.	Westmoreland Power Inc.

San Juan Transportation Co.	Westmoreland Prairie Resources Inc.
Texas Westmoreland Coal Co.	Westmoreland Resource Partners, LP
WCC Holding B.V.	Westmoreland Resources GP LLC
WCC Land Holding Co. Inc.	Westmoreland Resources Inc.
WEI - Roanoke Valley Inc.	Westmoreland Risk Management Inc.
Western Energy Co.	Westmoreland San Juan Holdings Inc.
Westmoreland - Roanoke Valley, LP	Westmoreland San Juan LLC
Westmoreland Canada Holdings Inc.	Westmoreland Savage Corporation
Westmoreland Canada LLC	WRI Partners Inc.

Sample email for client in work unrelated to Westmoreland

Dear _____,

I'm writing to inform you that McKinsey Recovery & Transformation Services U.S., LLC ("RTS") will be making a public filing on or before July 3, 2019 with the U.S. Bankruptcy Court for the Southern District of Texas in connection with its service to Westmoreland Coal Company that will refer to [CLIENT] as one of many clients of McKinsey. This disclosure contains no description of the work performed by RTS or McKinsey. RTS -- McKinsey's restructuring practice -- has served as an advisor to Westmoreland Coal Company and certain of its subsidiaries ("Westmoreland") in its recent chapter 11 case. Westmoreland identified [MASTER CLIENT] or one of its affiliates on a list of creditors and other parties related to its Chapter 11 case (the "Interested Parties List").

In the event our revenues from your engagements exceed certain thresholds, we also will disclose that fact. We are undertaking an analysis to determine whether [MASTER CLIENT] meets such a threshold and will reach out to you again in advance of any such disclosure.

For context, all advisors to a company that files for bankruptcy are required to file disclosures with the Bankruptcy Court of any connection to parties on the Interested Parties List. The filing will list [MASTER CLIENT] and any [MASTER CLIENT] affiliates and/or business units that McKinsey served along with many other McKinsey clients that appear on the Interested Parties List, and will not describe anything about the work that we did for you other than a statement that it was unrelated to Westmoreland.

Happy to address any questions or concerns you may have.

Best,
XXXX

SURVEY TEMPLATE

Instructions: Please answer the questions below and provide additional information as relevant. Press submit at the bottom of this survey once you are done. In case you have erroneously entered this survey, please exit by closing this browser window.

1. To your knowledge, is (or was) our work for [MASTER CLIENT] with respect to your designated engagements below, or any other [MASTER CLIENT] engagement, in any way related to Westmoreland?

[Check-box 1] -- Yes

[Check-box 2] -- No

[BELOW IS A MANDATORY FREE TEXT FIELD FOR ANYONE WHO SELECTS CHECK-BOX 1 ABOVE]

2. How are (or were) such services related to Westmoreland?

3. On June 25, 2019, unless you check the box below, Firm Legal will send a standardized notice of the disclosure either to the client contact specified in our consulting agreement with the client or to the client's general counsel. If you would like to send this notice yourself, would prefer to provide the appropriate client legal contact for the notification, or have already given notice to your client in connection with McKinsey's first round of Westmoreland disclosures, please check the box below and provide the name, email and title of the recipient and indicate if you will contact them, already have contacted them, or would like to use the listed name as the recipient of the notice from Firm Legal.

[Check-box 3] – I would like to contact the client myself, would prefer to provide the appropriate legal contact for the notification, or have already given my client notice in connection with McKinsey's first round of Westmoreland disclosures.

[BELOW IS A MANDATORY FREE TEXT FIELD FOR ANYONE WHO SELECTS CHECK-BOX 3 ABOVE]

Please see the list of engagements copied below. Please note that the table layout may change if viewed on a mobile phone. For best results, please access this link on a computer

[LIST OF ENGAGEMENTS]

McKinsey & Company, Inc.
Report as of July 3, 2019

Appendix E - Proposed Professional Personnel Survey

EMAIL TEMPLATE

From: McKinsey RTS Legal Disclosure
Subject: Westmoreland RTS - Your Response Required by June 19, 2019 – Important Legal Disclosure Obligations

This email requires your response by June 19, 2019. You may receive multiple emails on this subject. You are required to respond to each email.

You may not delegate this responsibility.

Dear [NAME],

You are receiving this email in connection with McKinsey RTS's recent engagement by Westmoreland Coal Company and certain of its affiliates during their Chapter 11 bankruptcy, and a submission that RTS is required to file with the U.S. Bankruptcy Court by July 3, 2019 for that engagement. That submission must contain disclosures, including RTS and certain of its affiliates' connections with entities previously identified as parties in interest to Westmoreland in the bankruptcy case.

In order for RTS's engagement to be approved by the Bankruptcy Court, we are required to submit certain disclosures, including RTS's connections with parties in interest in Westmoreland's bankruptcy case. RTS has identified you as a member of the team providing services to Westmoreland. Accordingly, we are reaching out to you to determine whether you have any **personal** connections with any parties in interest in the Westmoreland bankruptcy described below. The list of interested parties can be accessed using the link provided at the bottom of this email or directly through the survey link. Please review this list before completing the survey.

Please answer the questions below by clicking on the appropriate option in the survey link provided. Your response is required by close of business June 19, 2019.

If you have any questions, please do not hesitate to reach out to westmoreland_rts@mckinsey.com.

Thanks in advance for your help.

[Interested Parties List]

SURVEY TEMPLATE

Please answer the questions below by clicking on the appropriate option. Your response is required by close of business June 19, 2019.

1. From July 11, 2018 to the present, to your knowledge, did you or do you have any connections, other than professional client relationships in your capacity as a McKinsey professional, with any entity, person, or any person employed by any entity on the attached interested parties list?

This would include, for example, social or family relationships with, stock you hold directly in (but not through mutual funds and other investment vehicles that are managed by third parties with delegated investment authority and discretion), or prior employment by a party or someone employed by a party on the attached list.

[Check-box 1] -- Yes

[Check-box 2] -- No

[BELOW IS A MANDATORY FREE TEXT FIELD FOR ANYONE WHO SELECTS CHECK-BOX 1 ABOVE]

2. What is the nature of such connections(s)?

McKinsey & Company, Inc.
Report as of July 3, 2019

Appendix F - Proposed Professionals' and Unretained Affiliates' Client Serving Personnel Questionnaire

EMAIL TEMPLATE

From: McKinsey RTS Legal Disclosure

Subject: Deadline Friday (June 14) - McKinsey Legal Conflicts Check for all Firm CSP
– Westmoreland Coal Company Bankruptcy Case – Urgent Request for Information

THIS IS AN URGENT REQUEST FOR INFORMATION THAT REQUIRES YOUR IMMEDIATE ATTENTION AND RESPONSE IF YOU HAVE ANY INFORMATION TO REPORT OR MATTERS TO DISCLOSE.

FAILURE TIMELY TO RESPOND WILL CONSTITUTE YOUR AFFIRMATION THAT YOU HAVE NO INFORMATION TO REPORT OR MATTERS TO DISCLOSE.

IF YOU WOULD RESPOND IN THE NEGATIVE TO EACH OF THE THREE QUESTIONS BELOW, YOU DO NOT NEED TO RESPOND TO THIS QUESTIONNAIRE OR CLICK ON THE SURVEY LINK PROVIDED.

THANK YOU IN ADVANCE FOR YOUR PROMPT ASSISTANCE.

Dear [Preferred Name],

You are receiving this message in connection with McKinsey RTS's ("**RTS**") recent engagement by Westmoreland Coal Company and its affiliates listed below ("**Westmoreland**") during their Chapter 11 bankruptcy, and a submission that RTS is required to file with the U.S. Bankruptcy Court by July 3, 2019 for that engagement. That submission must contain disclosures, including RTS and certain of its affiliates' connections with entities previously identified as parties in interest to Westmoreland in the bankruptcy case.

As an advisor to Westmoreland, there are several types of disclosures that we must make to the Bankruptcy Court. Most of the information required to be disclosed can be obtained from the Firm's databases and records. That process is underway. We also need a limited amount of information, from Client Service Professionals ("**CSPs**") through questionnaires ("**Questionnaire Recipients**"). We ask these questions of all CSPs, not only CSPs who worked for Westmoreland.

First, we must disclose to the Bankruptcy Court presiding over the Westmoreland cases any holdings by Questionnaire Recipients in either the debt or equity securities of Westmoreland (e.g., excluding any investments, whether held through mutual funds or other investment vehicles, that are managed by third parties with delegated investment authority and discretion; "**Third-Party Managed Investments**"), as well as the existence of any other claims against Westmoreland held by any Questionnaire Recipient.

Second, we must disclose to the Bankruptcy Court whether any Questionnaire Recipient has any connections to the United State Trustee or any person employed in the Office of the United States Trustee for the Southern District of Texas.

Third, we must disclose to the Bankruptcy Court whether any Questionnaire Recipient has any connections to any of the Bankruptcy Judges for the Southern District of Texas.

Please review the categories of connections below that require disclosure and click on the survey link provided to submit your response **ONLY IF** you have a connection of the nature described.

Please complete the survey by end of day on **Friday, June 14, 2019**.

1. Debt or Equity Securities, or Other Claims Against Westmoreland*

Have you, on or after July 11, 2018, owned or held a beneficial interest in any debt or equity securities (other than Third-Party Managed Investments) of, or claims against, any of Westmoreland or its debtor affiliates (listed below)?

2. Connections to the United States Trustee or any Person Employed by the Office of the United States Trustee for the Southern District of Texas. The names of the United States Trustee and employees in the office of the United States Trustee for the Southern District of Texas are listed below. Do you have any connection to the United States Trustee or to someone employed in the office of the United States Trustee for the Southern District of Texas?

Jacqueline Boykin	Linda Motton
Hector Duran	Glenn Otto
John, P. Fitzgerald, III	Shannon F. Pecoraro
Peggy T. Flinchum	Patricia Schmidt
Barbara Griffin	Gwen Smith
Luci Johnson-Davis	Stephen Statham
Henry G. Hobbs, Jr.	June E. Turner
Diane Livingstone	Robert B. Van Arsdale
Christine March	Clarissa Waxton
Teresa E. McPherson	

3. Connections to any Bankruptcy Judges in the Southern District of Texas. The names of the Bankruptcy Judges in the Southern District of Texas are listed below. Do you have any connection to a Bankruptcy Judge for the Southern District of Texas?

David R. Jones	Jeffrey P. Norman
Jeff Bohm	Eduardo V. Rodriguez
Marvin Isgur	

[LINK TO SURVEY HERE](#)

If you have questions about this survey or need clarification, please reach out to us at westmoreland_rts@mckinsey.com and we will respond promptly.

If you are having any technical issues filling out this survey, please contact the [Global Helpdesk](#).

Thank you for your attention to this request.

- - - -

*** Bankruptcy Case and list of Westmoreland affiliates**

Westmoreland and its affiliates operate the sixth-largest coal-mining enterprise in North America including nineteen coal mines in six states and Canada. Westmoreland and its affiliates primarily produce and sell thermal coal to investment grade power plants under long-term, cost-protected contracts, as well as to industrial customers and barbeque charcoal manufacturers.

The list of relevant Westmoreland Coal Company affiliates is provided below:

Absaloka Coal LLC	Westmoreland Canadian Investments, LP
Basin Resources Inc.	Westmoreland Coal Co. Asset Corp
Buckingham Coal Co. LLC	Westmoreland Coal Sales Co. Inc.
Dakota Westmoreland Corporation	Westmoreland Energy LLC
Daron Coal Co. LLC	Westmoreland Energy Services Inc.
Harrison Resources LLC	Westmoreland Energy Services New York Inc.
Haystack Coal Co.	Westmoreland Kemmerer Fee Coal Holdings LLC
Oxford Conesville LLC	Westmoreland Kemmerer LLC
Oxford Mining Co. - Kentucky LLC	Westmoreland Mining LLC
Oxford Mining Co. LLC	Westmoreland North Carolina Power LLC
Prairie Mines & Royalty ULC	Westmoreland Partners
San Juan Coal Co.	Westmoreland Power Inc.

San Juan Transportation Co.	Westmoreland Prairie Resources Inc.
Texas Westmoreland Coal Co.	Westmoreland Resource Partners, LP
WCC Holding B.V.	Westmoreland Resources GP LLC
WCC Land Holding Co. Inc.	Westmoreland Resources Inc.
WEI - Roanoke Valley Inc.	Westmoreland Risk Management Inc.
Western Energy Co.	Westmoreland San Juan Holdings Inc.
Westmoreland - Roanoke Valley, LP	Westmoreland San Juan LLC
Westmoreland Canada Holdings Inc.	Westmoreland Savage Corporation
Westmoreland Canada LLC	WRI Partners Inc.

SURVEY TEMPLATE

Instructions: Please check the most relevant option as it applies to you in each of the categories below and provide additional information as relevant. Press submit at the bottom of this survey once you are done. In case you have erroneously entered this survey, please exit by closing this browser window.

I. Debt or Equity Securities, or Other Claims Against Westmoreland Coal Company or its debtor affiliates*

If you have owned or held a beneficial interest in any debt or equity securities (other than any investments, whether held through mutual funds or other investment vehicles, that are managed by third parties with delegated investment authority and discretion; “**Third-Party Managed Investments**”) of, or claims against, Westmoreland Coal Company or one or more of its debtor affiliates* on or after July 11, 2018, please check the appropriate box below and provide the requested information.

[Check-box 1] -- I currently hold debt or equity securities of, or other claims against, Westmoreland Coal Company or one or more of its debtor affiliates. (If selecting this option, please describe in your reply the type of debt or equity securities that you hold, the legal name of the issuer, and/or the nature of any claim that you may hold or assert in the text field below.)*

[Check-box 2] -- I have held but no longer hold debt or equity securities (other than Third-Party Managed Investments) of, or other claims against, Westmoreland Coal Company and one or more of its debtor affiliates. (If selecting this option, please describe in your reply the date on which you sold or otherwise disposed of your securities or claims, the type of debt or equity securities that you hold, the legal name of the issuer, and/or the nature of any claim that you may hold or assert in the text field below.)*

[BELOW IS A MANDATORY FREE TEXT FIELD FOR ANYONE WHO SELECTS EITHER CHECK-BOX FOR QUESTION 1 ABOVE]

If you have selected either option, please provide further details below:

II. Connections to the United States Trustee or any Person Employed by the Office of the United States Trustee for the Southern District of Texas. The names of the United States Trustee and employees in the office of the United States Trustee for the Southern District of Texas are listed below.

Jacqueline Boykin	Linda Motton
Hector Duran	Glenn Otto
John, P. Fitzgerald, III	Shannon F. Pecoraro
Peggy T. Flinchum	Patricia Schmidt
Barbara Griffin	Gwen Smith
Luci Johnson-Davis	Stephen Statham
Henry G. Hobbs, Jr.	June E. Turner
Diane Livingstone	Robert B. Van Arsdale
Christine March	Clarissa Waxton
Teresa E. McPherson	

[Check-box] I have connections to the United States trustee or to someone employed in the office of the United States trustee for the Southern District of Texas.

[BELOW IS A MANDATORY FREE TEXT FIELD FOR ANYONE WHO SELECTS THE CHECK-BOX IN QUESTION #2 ABOVE]

Please describe in the text field below the connections that you have to the United States Trustee or to anyone employed in the office of the United States Trustee, including the name of such person:

--

III. Connections to any Bankruptcy Judges in the Southern District of Texas. The names of the Bankruptcy Judges in the Southern District of Texas are listed below:

David R. Jones	Jeffrey P. Norman
Jeff Bohm	Eduardo V. Rodriguez
Marvin Isgur	

[Check-box] I have connections to a Bankruptcy Judge for the Southern District of Texas.

[BELOW IS A MANDATORY FREE TEXT FIELD FOR ANYONE WHO SELECTS THE CHECK-BOX IN QUESTION #3 ABOVE]

Please describe in the text field below the connections that you have to a Bankruptcy Judge for the Southern District of Texas, including the name of such person:

*** Westmoreland affiliates**

The list of relevant Westmoreland Coal Company affiliates is provided below:

Absaloka Coal LLC	Westmoreland Canadian Investments, LP
Basin Resources Inc.	Westmoreland Coal Co. Asset Corp
Buckingham Coal Co. LLC	Westmoreland Coal Sales Co. Inc.
Dakota Westmoreland Corporation	Westmoreland Energy LLC
Daron Coal Co. LLC	Westmoreland Energy Services Inc.
Harrison Resources LLC	Westmoreland Energy Services New York Inc.
Haystack Coal Co.	Westmoreland Kemmerer Fee Coal Holdings LLC
Oxford Conesville LLC	Westmoreland Kemmerer LLC
Oxford Mining Co. - Kentucky LLC	Westmoreland Mining LLC
Oxford Mining Co. LLC	Westmoreland North Carolina Power LLC
Prairie Mines & Royalty ULC	Westmoreland Partners
San Juan Coal Co.	Westmoreland Power Inc.
San Juan Transportation Co.	Westmoreland Prairie Resources Inc.
Texas Westmoreland Coal Co.	Westmoreland Resource Partners, LP
WCC Holding B.V.	Westmoreland Resources GP LLC
WCC Land Holding Co. Inc.	Westmoreland Resources Inc.

WEI - Roanoke Valley Inc.	Westmoreland Risk Management Inc.
Western Energy Co.	Westmoreland San Juan Holdings Inc.
Westmoreland - Roanoke Valley, LP	Westmoreland San Juan LLC
Westmoreland Canada Holdings Inc.	Westmoreland Savage Corporation
Westmoreland Canada LLC	WRI Partners Inc.

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About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

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