

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re: Optim Energy LLC, et al.

Walnut Creek Mining Company,	:	
	:	
Appellant,	:	
	:	
v.	:	C. A. No. 14-738
	:	
Cascade Investment LLC, et al.,	:	
	:	
Appellees.	:	

RECOMMENDATION

At Wilmington this **8th** day of **July, 2014**.

WHEREAS, pursuant to paragraph 2(a) of the Procedures to Govern Mediation of Appeals from the United States Bankruptcy Court for this District dated September 11, 2012, the court conducted an initial review, which included information from counsel, to determine the appropriateness of mediation in this matter;

WHEREAS, as a result of the above screening process, the issues involved in this case are not amenable to mediation and mediation at this stage would not be a productive exercise, a worthwhile use of judicial resources nor warrant the expense of the process. Specifically given the nature of the dispute, the parties contend mediation is not appropriate and not likely to result in a consensual resolution. The issues on appeal are primarily legal concerns in which the appellant alleges judicial error in the Bankruptcy Court's ruling that it failed to allege a colorable claim against the appellee and appellant seeks *nunc pro tunc* relief from this court to May 14, 2014. Since the parties' disagreement

on the issues is irreconcilable, mandatory mediation will delay judicial resolution and unnecessarily increase litigation costs and will not facilitate efficient, expeditious or amicable resolution.

THEREFORE, IT IS RECOMMENDED that, pursuant to paragraph 2(a) Procedures to Govern Mediation of Appeals from the United States Bankruptcy Court for this District and 28 U.S.C. § 636(b), this matter be withdrawn from the mandatory referral for mediation and proceed through the appellate process of this Court. In light of the parties joint request for removal from mandatory mediation and being advised of their right to file objections to this Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), FED. R. CIV. P. 72(a) and D. DEL. LR 72.1 in this order, it is unlikely any objections to this Recommendation will be filed.

IT IS FURTHER RECOMMENDED at the request of the parties, that the following briefing schedule be entered:

Appellant's opening brief	July 21, 2014
Appellees' answering brief	August 20, 2014
Appellant's reply brief	September 4, 2014

Local counsel are obligated to inform out-of-state counsel of this Order.

/s/ Mary Pat Thyng
UNITED STATES MAGISTRATE JUDGE