

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re:

MURRAY ENERGY HOLDINGS CO., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 19-56885 (JEH)
)
) Judge John E. Hoffman, Jr.
)
) (Jointly Administered)
)

**AGREED ORDER ESTABLISHING PROCEDURES FOR TELEPHONIC AND/OR
VIRTUAL HEARING SCHEDULED FOR APRIL 30, 2020, AS A RESULT OF THE
COVID-19 PANDEMIC**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), Andy R. Vara, the United States Trustee for Region 9 (“U.S. Trustee”), the Official Committee of

¹ Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. Such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://cases.primeclerk.com/MurrayEnergy>. The location of Debtor Murray Energy Holdings Co.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 46226 National Road, St. Clairsville, Ohio 43950.

Unsecured Creditors (the “UCC”), the Official Committee of Retirees (the “Retiree Committee”), CONSOL Energy Inc., and various affiliated entities (collectively, “CONSOL”), the Ad Hoc Group of Superpriority Lenders (the “DIP Lenders”), the United Mine Workers of America (the “UMWA”), and The UMWA 1974 Pension Plan and Trust, UMWA 1992 Benefit Plan, UMWA 1993 Benefit Plan, and UMWA 1988 Cash Deferred Saving (collectively, the “Funds”, and collectively with the Debtors, the U.S. Trustee, the UCC, the Retiree Committee, CONSOL, the DIP Lenders and the UMWA, the “Parties”, or, each individually, a “Party”), each by and through counsel, having agreed that pursuant to Federal Rule of Civil Procedure 43(a) (made applicable by Federal Rule of Bankruptcy Procedure 9017), the current COVID-19 pandemic provides for good cause and constitutes compelling circumstances, and as a result thereof, the Parties having further agreed to certain telephonic and virtual hearing procedures which shall provide appropriate safeguards in relation to the hearing on the following pending matters: (i) *Debtors’ Motion for Entry of an Order (I) Approving the Settlement Between the Debtors, the Retiree Committee, and United Mine Workers of America 1992 Benefit Plan and (II) Granting Related Relief* [Docket No. 1265] (the “9019 Motion”), and (ii) *CONSOL Energy Inc. and Affiliates’ Objection to the Debtors’ Motion for Entry of an Order (I) Approving the Settlement Between the Debtors, the Retiree Committee, and United Mine Workers of America 1992 Benefit Plan and (II) Granting Related Relief* [Docket No. 1338] (the “CONSOL Objection”), and the Court having reviewed the record and being fully advised,

IT IS HEREBY AGREED AND ORDERED that:

1. **Telephonic and Video Conferencing Solutions**. The hearing scheduled for **Thursday, April 30, 2020 at 10:00 a.m. prevailing Eastern Time** shall take place virtually. The Court will be utilizing both CourtSolutions (for audio purposes) and Skype (for video purposes).

CourtSolutions can be accessed by calling (917) 746-7476 or visiting the website www.court-solutions.com and the Skype link shall be provided to those Parties who have submitted a notice of intent to participate via Skype to the Court in accordance with Section 3 below. All counsel and witnesses shall conduct a pre-hearing test of Skype and, if possible, CourtSolutions, using the same equipment that they will be using during the hearing.

2. **Limit on Video Conferencing.** Due to video conferencing limitations, the optimal number of Skype participants is ten (10), as opposed to CourtSolutions, which allows for unlimited participants. In an effort not to overburden the Skype platform, video conference participants shall be limited to the witnesses, those parties that anticipate questioning or cross-examining witnesses and, when possible, should be limited to one attorney per firm. Parties participating via Skype who wish to address a witness shall simultaneously be connected to CourtSolutions for audio purposes. Parties attending via Skype shall utilize the Skype link only during the matter for which they wish to be heard. Upon the conclusion of such matter, the party shall disconnect from the Skype link and may continue participation in the hearing through CourtSolutions. Similarly, witnesses shall utilize the Skype link only during the matters on which they are called to testify. Upon completion of their testimony and all cross-examination, the witness shall disconnect from the Skype link and may continue participation in the hearing through CourtSolutions. In order to limit the number of Skype participants to ten persons, if necessary, the Court will take a recess between matters in order to add or subtract individuals participating via Skype.

3. **Prior Notice of Intent to Skype.** All Parties wishing to attend the hearing via Skype shall provide notice to Hoffman282@ohsb.uscourts.gov via electronic mail no later than **4:00 p.m. prevailing Eastern Time on Monday, April 27, 2020**. The Court will circulate the Skype link to all Parties participating via Skype prior to the hearing.

4. **Submission of Exhibits to Court.** Parties submitting exhibits related to the 9019 Motion and/or the CONSOL Objection shall send all exhibits to Hoffman282@ohsb.uscourts.gov via electronic mail in .pdf format no later than three-business days prior to the scheduled hearing. Such information shall be submitted to the Court separately from (and in addition to) the Exhibit Lists required to be filed with the court three-business days prior to the hearing pursuant to Section 52 of that certain *Second Amended Order Implementing Certain Notice and Case Management Procedures* [Docket No. 1103] (the “Case Management Order”).

5. **Form of Exhibits.** Each Party shall combine all of its exhibits into one .pdf document and each individual exhibit shall be bookmarked for easy review by the Court. All parties shall submit their exhibits to the Court; provided, however, that, notwithstanding the foregoing, any exhibit that has been designated by any Party (as the term “Party” is defined in the *Confidentiality Agreement and Stipulated Protective Order* dated March 12, 2020 [Docket No. 1060] (the “Protective Order”) (such Party is the “Designating Party”)) as containing “Confidential Material” or “Highly Confidential Material” (a “Designated Document”) shall be emailed only to the Court under paragraph 4, to counsel for the Designating Party, and to counsel for any Party to this Order who also is a Party as defined in the Protective Order, unless the Designating Party agrees in a writing, which may be an email, that the Designated Document also may be emailed to any other Party to this Order who is not also a Party as defined in the Protective Order. Nothing in this paragraph otherwise alters the Parties’ obligations under the Protective Order regarding the use of exhibits in Court.

6. **Filing and Service of Exhibits.** Parties submitting exhibits are excused from (i) filing exhibits on the court docket, and (ii) serving the exhibits on the Master Service List. Parties submitting exhibits need only email the exhibits to the other Parties to this Order and the Court.

7. **Remote Witness Testimony.** In accordance with Federal Rule of Civil Procedure 43(a) (made applicable by Federal Rule of Bankruptcy Procedure 9017), for good cause and in compelling circumstances a witness may be permitted to testify by contemporaneous transmission from a location other than the courtroom. Based on the foregoing, any witness called to testify or subject to cross-examination in relation to the 9019 Motion and/or CONSOL Objection shall be permitted to testify by contemporaneous transmission from a different location (“Remote Witness”).

8. **Requirements for Allowance of Remote Testimony; Additional Information.** As additional safeguards for the allowance of a Remote Witness, the Party sponsoring said Remote Witness shall file with the Court, no later than two-business days prior to the scheduled hearing, a document containing the following information:

- a. The name and title of the Remote Witness.
- b. The matter on which the Remote Witness will provide testimony.
- c. The location of the Remote Witness (city, state, country).
- d. The place from which the Remote Witness will testify (e.g. home, office – *no addresses are required*).
- e. Whether anyone will be in the room with the Remote Witness during the testimony, and if so, who (name, title, relationship to the Remote Witness), and for what purpose.
- f. Whether the Remote Witness will have access to any documents other than exhibits that have been emailed to the Court and the parties, and if so, what documents.

Such information may be filed with the Court separately from (or incorporated within) the Witness Lists required to be filed with the Court three-business days prior to the hearing pursuant to Section 51 of the Case Management Order.

9. **Swearing In of Remote Witnesses.** All Remote Witnesses shall be sworn in over Skype or other video conferencing solution, as applicable, and such testimony will have the same effect and be binding upon the Remote Witness in the same manner as if such Remote Witness was sworn in by the Court deputy in person in open court.

10. **Responsibility for Remote Witnesses.** The Party sponsoring the witness shall be responsible for ensuring that the CourtSolutions dial-in, Skype link, and all exhibits are supplied to the Remote Witness prior to the hearing and that the Remote Witness has been registered with CourtSolutions and Skype, as applicable.

11. In connection with the 9019 Motion and CONSOL's Objection, CONSOL has filed a *Letter Brief Pursuant to Stipulation between Debtors and CONSOL Energy, Inc. Establishing Discovery Protocols* [Docket No. 1361] (the "First Letter Brief") and a *Second Letter Brief Pursuant to Stipulation between Debtors and CONSOL Energy, Inc. Establishing Discovery Protocols* [Docket No. 1362](the "Second Letter Brief", and collectively with the First Letter Brief, the "Letter Briefs").

12. Subsequently the Debtors have filed *Debtors' Motion in Limine to Strike the Declarations and Exclude Testimony of Adam M. Rosen, Joseph V. Pagnia, John L. Weiss, Jessica Kachur, and Kurt R. Salvatori* [Docket No. 1363] (the "Motion in Limine", and collectively with the Letter Briefs, the "Expedited Hearing Pleadings") and a *Motion for an Expedited Hearing and Shortened Notice with respect to the Motion in Limine* [Docket No. 1364] (the "Expedited Hearing Motion").

13. **Expedited Hearing and Deadlines.** Pursuant to the Expedited Hearing Motion, the Court has set a hearing on the Expedited Hearing Pleadings for **Wednesday, April 29, 2020 at 2:00 p.m. prevailing Eastern Time** (the “Expedited Hearing”). All responses to the Expedited Hearing Pleadings must be submitted to the Court by **Tuesday, April 28, 2020 at 12:00 p.m. prevailing Eastern Time** in order to be heard at the Expedited Hearing.

SO ORDERED.

Copies to Default List.

AGREED TO AND TENDERED BY:

/s/ Kim Martin Lewis

Kim Martin Lewis (0043533)
Alexandra S. Horwitz (0096799)
DINSMORE & SHOHL LLP
255 East Fifth Street
Suite 1900
Cincinnati, Ohio 45202
Telephone: (513) 977-8200
Facsimile: (513) 977-8141
Email: kim.lewis@dinsmore.com
allie.horwitz@dinsmore.com

Nicole L. Greenblatt, P.C. (admitted *pro hac vice*)
Mark McKane, P.C. (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: nicole.greenblatt@kirkland.com
mark.mckane@kirkland.com

Co-Counsel to the Debtors and Debtors in Possession

- and -

Ross M. Kwasteniet, P.C. (admitted *pro hac vice*)
Joseph M. Graham (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: ross.kwasteniet@kirkland.com
joe.graham@kirkland.com

Counsel to the Debtors and Debtors in Possession

-and-

ANDY R. VARA
United States Trustee
Region 9

/s/ Monica V. Kindt

Monica V. Kindt, Esq. (#0073085)
Assistant United States Trustee
UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
550 Main Street, Suite 4-812
Cincinnati, Ohio 45202
Voice: (513) 684-6988, x226, Fax: 684-6994
E-mail: monica.kindt@usdoj.gov

-and-

/s/ Tiffany Strelow Cobb

Tiffany Strelow Cobb, Esq. (#0067516)

Brenda K. Bowers (#0046799)

Melissa S. Giberson (#0082413)

VORYS, SATER, SEYMOUR AND PEASE, LLP

52 East Gay Street/ P.O. Box 1008

Columbus, Ohio 43216-1008

Telephone: (614) 464-6400

Facsimile: (614) 464-6350

E-mail: tscobb@vorys.com

bkbowers@vorys.com

msgiverson@vorys.com

Lorenzo Marinuzzi, Esq. (admitted *pro hac vice*)

Jennifer Marines, Esq. (admitted *pro hac vice*)

Todd Goren, Esq. (admitted *pro hac vice*)

Erica Richards, Esq. (admitted *pro hac vice*)

Benjamin Butterfield, Esq. (admitted *pro hac vice*)

MORRISON & FOERSTER LLP

250 West 55th Street

New York, NY 10019-9601

Telephone: (212) 468-8000

Facsimile: (212)468-7900

E-mail: lmarinuzzi@mofo.com

jmarines@mofo.com

tgoren@mofo.com

erichards@mofo.com

bbutterfield@mofo.com

Counsel to the UCC

-and-

/s/ Michael J. Healey, Esq.

Michael J. Healey, Esq.

Pa. ID No. 27283

Healey Block LLC

247 Fort Pitt Boulevard, 4th Floor

Pittsburgh, PA 15222

412) 391-7711

Counsel to the Official Committee of Retirees

-and-

/s/ Jeffrey C. Toole

Jeffrey C. Toole, Esq. (#0064688)
Harry W. Greenfield, Esq. (#0003839)
600 Superior Avenue East Fifth Third Building, Suite 1300
Cleveland, OH 44114
Telephone: (800) 693-4013
Facsimile: (412) 456-8135
E-mail: jtoole@bernsteinlaw.com
hgreenfield@bernsteinlaw.com

Kirk B. Burkley, Esq. (admitted *pro hac vice*)
707 Grant Street, Suite 2200
Pittsburgh, PA 15219
Telephone: (412) 456-8100
Facsimile: (412) 456-8135
Email: kburkley@bernsteinlaw.com

Counsel to CONSOL Energy Inc.

-and-

DAVIS POLK & WARDWELL LLP

/s/ James I. McClammy

Damian S. Schaible, Esq.
James I. McClammy, Esq.
Adam L. Shpeen, Esq.
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4169
Facsimile: (212) 701-5800
E-mail: damian.schaible@davispolk.com
james.mcclammy@davispolk.com
adam.shpeen@davispolk.com

-and-

FROST BROWN TODD LLC

Douglas L. Lutz, Esq.
A.J. Webb, Esq.
Bryan J. K. Sisto, Esq.
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202
Telephone: (513) 651-6800

Facsimile: (513) 651-6981
Email: dlutz@fbtlaw.com
Awebb@fbtlaw.com
bsisto@fbtlaw.com

Counsel to the Ad Hoc Group of Superpriority Lenders

-and-

/s/ R. Scott Williams
R. Scott Williams (admitted *pro hac vice*)
RUMBERGER, KIRK & CALDWELL, P.C.
2001 Park Place North, Suite 1300
Birmingham, Alabama 35203
Telephone: (205) 327-5550
Facsimile: (205) 326-6786
E-mail: swilliams@rumberger.com

Counsel to the UMWA

-and-

/s/ Nick V. Cavalieri
Nick V. Cavalieri (0013097)
Matthew T. Schaeffer (0066750)
BAILEY CAVALIERI LLC
10 W. Broad Street, Suite 2100
Columbus, OH 43215-3422
(614) 229-3252 / Fax - (614) 221-0479
E-mail: nick.cavalieri@baileycavalieri.com
matthew.schaeffer@baileycavalieri.com

Paul A. Green (admitted *pro hac vice*)
John R. Mooney (admitted *pro hac vice*)
Diana M. Bardes (admitted *pro hac vice*)
MOONEY, GREEN, SAINDON, MURPHY & WELCH, PC
1920 L Street, NW, Suite 400
Washington, DC 20036
Telephone: (202) 783-0010
E-mail: pgreen@mooneygreen.com
jmooney@mooneygreen.com
dbardes@mooneygreen.com

Filiberto Agusti (admitted *pro hac vice*)
Joshua Taylor (admitted *pro hac vice*)
STEPTOE & JOHNSON LLP

1330 Connecticut Avenue, NW
Washington, DC 20036
T: (202) 429-6428 / F: (202) 429-3902
E-Mail: fagusti@step toe.com
jrtaylor@step toe.com

Counsel to the Funds