

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

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In re:)	Chapter 11
MURRAY ENERGY HOLDINGS CO., <i>et al.</i> , ¹)	Case No. 19-56885 (JEH)
)	Judge John E. Hoffman, Jr.
Debtors.)	(Jointly Administered)

**CERTIFICATE OF NO OBJECTION REGARDING FINAL ORDER
(I) AUTHORIZING THE DEBTORS TO CONTINUE THEIR SURETY BOND
PROGRAM AND (II) GRANTING RELATED RELIEF, AND NOTICE OF FILING
NEW PROPOSED FORM OF ORDER**

Pursuant to 28 U.S.C. § 1746 and the case management procedures approved in these chapter 11 cases [Docket No. 113] (the “Case Management Procedures”), the undersigned counsel for the above-captioned debtors and debtors in possession (the “Debtors”) hereby certifies as follows:

1. On October 29, 2019, the Debtors filed the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Continue Their Surety Bond Program and (II) Granting Related Relief* [Docket No. 19] (the “Motion”) with the United States Bankruptcy Court for the Southern District of Ohio (the “Court”), which was served on the parties in interest set forth in the *Affidavit of Service* [Docket No. 84].

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.

2. On November 1, 2019, the Court entered the *Interim Order (I) Authorizing the Debtors to Continue their Surety Bond Program and (II) Granting Related Relief* [Docket No. 99], which was served on the parties in interest set forth in the *Affidavit of Service* [Docket No. 163].

3. The deadline for parties to object or file responses to the Motion or to the entry of a final order granting the relief requested in the Motion was set for November 21, 2019, at 4:00 p.m., prevailing Eastern Time (the "Objection Deadline"). The Case Management Procedures provide that a motion may be granted without a hearing, provided that, after the passage of the objection deadline, the movant submits a proposed order granting the motion to the Court along with a certificate that no objection or other response has been filed or served in accordance with the Case Management Procedures.

4. The Objection Deadline has now passed and the Debtors are unaware of any objections to the Motion or to the entry of a final order granting the relief requested in the Motion, either filed with the Court on the docket of these chapter 11 cases or served on counsel to the Debtors.

5. The Debtors received informal comments from various parties in interest, including the Ad Hoc Group of Superiority Lenders, the Official Committee of Unsecured Creditors, the United States Department of Justice, and Argonaut Insurance Company, one of the Debtors' surety bond providers. Those comments are reflected in the revised proposed final order approving the Motion attached hereto as Exhibit A (the "Revised Proposed Final Order"). A redline of the Revised Proposed Final Order, reflecting changes from the proposed form of final order attached to the Motion, is attached hereto as Exhibit B.

6. Accordingly, the Debtors respectfully request entry of the Revised Proposed Final Order, a copy of which is attached hereto as Exhibit A, at the Court's earliest convenience. If not

entered prior to the hearing, the Debtors will seek entry of the Revised Proposed Final Order at the hearing scheduled for 9:30 a.m., prevailing Eastern Time, on December 4, 2019, before the Honorable John E. Hoffman, Jr., United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of Ohio, Courtroom A, 5th Floor, 170 North High Street, Columbus, Ohio 43215.

Dated: December 2, 2019
Cincinnati, Ohio

/s/ Kim Martin Lewis

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Revised Proposed Final Order

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

In re:)	
)	Chapter 11
)	
MURRAY ENERGY HOLDINGS CO., <i>et al.</i> , ¹)	Case No. 19-56885 (JEH)
)	
)	Judge John E. Hoffman, Jr.
)	
Debtors.)	(Jointly Administered)

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO CONTINUE THEIR SURETY
BOND PROGRAM AND (II) GRANTING RELATED RELIEF
[RELATED TO DOCKET NOS. 19, 99]**

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.

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Order"), (a) authorizing the Debtors to continue, renew, and supplement the Surety Bond Program on an uninterrupted basis, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declarations; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *General Order 30-2* from the United States Bankruptcy Court for the Southern District of Ohio, dated October 10, 2019, and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth in this Final Order.
2. The Debtors are authorized, but not directed, to continue the Surety Bond Program without interruption in the ordinary course of business, including the payment of any

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

prepetition or postpetition Surety Premiums and any amounts owed in connection with the Surety Indemnity Agreements or on account of the Brokerage Fees; *provided, however*, the Debtors shall not be permitted to make payments pursuant to this Final Order in excess of \$350,000 without the prior consent of the Ad Hoc Group of Superpriority Lenders, and prior written notice to the Official Committee of Unsecured Creditors (the "UCC").

3. The Debtors are further authorized, but not directed, to (a) obtain new Surety Bonds, (b) maintain existing collateral, (c) post new or additional collateral or issue letters of credit, (d) renew or change bond amounts of existing Surety Bonds, (e) execute other agreements or discontinue their existing agreements in connection with the Surety Bond Program, and (f) continue to perform under the Surety Indemnity Agreements; *provided, however*, that the Debtors shall not be permitted to post new or additional collateral pursuant to this Final Order in excess of \$1 million in aggregate amount without the prior consent of the Ad Hoc Group of Superpriority Lenders, and without prior written notice to the UCC.

4. Notwithstanding the relief granted in this Final Order and any actions (including payments made) pursuant to such relief, nothing herein shall preclude a Surety from (a) declining to renew any expiring Surety Bond, (b) declining to extend any Surety Bond beyond its term, (c) declining to provide consent to, or otherwise exercising any rights in response to, the proposed assumption and/or assignment of any existing Surety Bond, any indemnity agreements between the Surety and any Debtors or other indemnitor, and/or any other agreement relating thereto, (d) declining to issue any new or additional Surety Bond, or (e) cancelling any Surety Bond at the written request of the Debtors; *provided* that any cancellation of any Surety Bond shall only be effectuated pursuant to the terms of the applicable Surety Bond, applicable provisions of the Bankruptcy Code, or applicable nonbankruptcy law.

5. Nothing in this Final Order shall constitute a determination, finding of fact, or conclusion of law relating to the validity, extent, or priority of any claim asserted by a Surety or any other party for indemnification under any indemnity agreement, Surety Bond, or any other agreement related thereto, related to or arising out of any actual, potential, asserted, or to be asserted, liability of the Surety, or any other party, to any beneficiary or obligee under any Surety Bond, indemnity agreement, or other agreement related thereto. For the avoidance of doubt, the Debtors and all parties, including, but not limited to, the Sureties, retain all rights and defenses relating to the foregoing, and nothing herein, shall constitute an impairment, waiver, or modification of such rights or defenses.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, *provided* that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtor's instructions.

7. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any

claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

9. Notwithstanding the relief granted in this Final Order, any payment made or to be made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any interim or final orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession financing facility and any budget or cash flow forecasts in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget or cash flow forecasts in connection therewith (in either case, the "DIP Order"). To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control. For the avoidance of

doubt, the Debtors are not authorized to make any payments pursuant to this Final Order to, or on behalf of, a non-debtor affiliate except as permitted by the Approved Cash Flow Forecasts (as defined in the DIP Order).

10. Notwithstanding anything else herein, the Debtors shall not make any payment pursuant to the relief in this Final Order to (a) any direct or indirect holder, or relative of such holder, of any equity interests in Murray Energy Holdings Co. (including Class A or Class B shares), or (b) any entity owned or controlled by any direct or indirect holder, or relative of such holder, of equity interests in Murray Energy Holdings Co. (including Class A or Class B shares), without the consent of the Ad Hoc Group of Superpriority Lenders and the UCC, which consent, in each case, shall not be unreasonably withheld, conditioned, or delayed.

11. Notwithstanding anything to the contrary in this Final Order, nothing in this Final Order shall relieve the Debtors of any obligations under federal, state, or local police, or regulatory laws or under 28 U.S.C. § 959(b), provided that nothing herein shall limit or impair the Debtors' rights to assert defenses under applicable law, and nothing herein shall create new defenses to obligations under police or regulatory laws or 28 U.S.C. § 959(b)

12. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

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

14. The Debtors shall serve this Final Order in accordance with all applicable rules and shall file a certificate of service evidencing compliance with this requirement.

15. The Debtors are authorized to take all reasonable actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

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

SO ORDERED.

Copies to Default List

Exhibit B

Redline

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

In re:)	Chapter 11
)	
MURRAY ENERGY HOLDINGS CO., <i>et al.</i> , ¹)	Case No. 19-56885 (JEH)
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)	Judge John E. Hoffman, <u>Jr.</u>
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Debtors.)	(Jointly Administered-Requested)

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO CONTINUE THEIR SURETY
BOND PROGRAM AND (II) GRANTING RELATED RELIEF
[RELATED TO DOCKET NOS. —19, 99]**

¹ Due to the large number of Debtors in these chapter 11 cases, ~~for which joint administration has been requested,~~ 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.

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Order"), (a) authorizing the Debtors to continue, renew, and supplement the Surety Bond Program on an uninterrupted basis, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declarations; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *General Order 30-2* from the United States Bankruptcy Court for the Southern District of Ohio, dated October 10, 2019, and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth in this Final Order.

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

2. The Debtors are authorized, but not directed, to continue the Surety Bond Program without interruption in the ordinary course of business, including the payment of any prepetition or postpetition Surety Premiums and any amounts owed in connection with the Surety Indemnity Agreements or on account of the Brokerage Fees; *provided, however*, the Debtors shall not be permitted to make payments pursuant to this Final Order in excess of \$350,000 without the prior consent of the Ad Hoc Group of Superpriority Lenders, and prior written notice to the Official Committee of Unsecured Creditors (the "UCC").

3. The Debtors are further authorized, but not directed, to (a) obtain new Surety Bonds, (b) maintain existing collateral, (c) post new or additional collateral or issue letters of credit, (d) renew or change bond amounts of existing Surety Bonds, (e) execute other agreements or discontinue their existing agreements in connection with the Surety Bond Program, and (f) continue to perform under the Surety Indemnity Agreements; *provided, however*, that the Debtors shall not be permitted to post new or additional collateral pursuant to this Final Order in excess of \$1 million in aggregate amount without the prior consent of the Ad Hoc Group of Superpriority Lenders, and without prior written notice to the UCC.

4. Notwithstanding the relief granted in this Final Order and any actions (including payments made) pursuant to such relief, nothing herein shall preclude a Surety from (a) declining to renew any expiring Surety Bond, (b) declining to extend any Surety Bond beyond its term, (c) declining to provide consent to, or otherwise exercising any rights in response to, the proposed assumption and/or assignment of any existing Surety Bond, any indemnity agreements between the Surety and any Debtors or other indemnitor, and/or any other agreement relating thereto, (d) declining to issue any new or additional Surety Bond, or (e) cancelling any Surety Bond at the written request of the Debtors; *provided* that any

cancellation of any Surety Bond shall only be effectuated pursuant to the terms of the applicable Surety Bond, applicable provisions of the Bankruptcy Code, or applicable nonbankruptcy law.

5. Nothing in this Final Order shall constitute a determination, finding of fact, or conclusion of law relating to the validity, extent, or priority of any claim asserted by a Surety or any other party for indemnification under any indemnity agreement, Surety Bond, or any other agreement related thereto, related to or arising out of any actual, potential, asserted, or to be asserted, liability of the Surety, or any other party, to any beneficiary or obligee under any Surety Bond, indemnity agreement, or other agreement related thereto. For the avoidance of doubt, the Debtors and all parties, including, but not limited to, the Sureties, retain all rights and defenses relating to the foregoing, and nothing herein, shall constitute an impairment, waiver, or modification of such rights or defenses.

6. ~~4-~~The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, *provided* that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtor's instructions.

7. ~~5-~~Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code

or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

8. ~~6.~~—The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

9. ~~7.~~—Notwithstanding the relief granted in this Final Order, any payment made or to be made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any interim or final orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession financing facility and any budget or cash flow forecasts in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget or cash flow forecasts in connection therewith (in either case, the "DIP Order"). To the

extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control. For the avoidance of doubt, the Debtors are not authorized to make any payments pursuant to this Final Order to, or on behalf of, a non-debtor affiliate except as permitted by the Approved Cash Flow Forecasts (as defined in the DIP Order).

10. ~~8.~~ Notwithstanding anything else herein, the Debtors shall not make any payment pursuant to the relief in this Final Order to (a) any direct or indirect holder, or relative of such holder, of any equity interests in Murray Energy Holdings Co. (including Class A or Class B shares), or (b) any entity owned or controlled by any direct or indirect holder, or relative of such holder, of equity interests in Murray Energy Holdings Co. (including Class A or Class B shares), without the consent of the Ad Hoc Group of Superpriority Lenders and the UCC, which consent, in each case, shall not be unreasonably withheld, conditioned, or delayed.

11. Notwithstanding anything to the contrary in this Final Order, nothing in this Final Order shall relieve the Debtors of any obligations under federal, state, or local police, or regulatory laws or under 28 U.S.C. § 959(b), provided that nothing herein shall limit or impair the Debtors' rights to assert defenses under applicable law, and nothing herein shall create new defenses to obligations under police or regulatory laws or 28 U.S.C. § 959(b)

12. ~~9.~~ Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

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

| 14. The Debtors shall serve this Final Order in accordance with all applicable rules
| and shall file a certificate of service evidencing compliance with this requirement.

| 15. ~~11.~~—The Debtors are authorized to take all reasonable actions necessary to
effectuate the relief granted in this Final Order in accordance with the Motion.

| 16. ~~12.~~—This Court retains exclusive jurisdiction with respect to all matters arising
from or related to the implementation, interpretation, and enforcement of this Final Order.

SO ORDERED.

| Copies to Default List

