insolvency 2020

































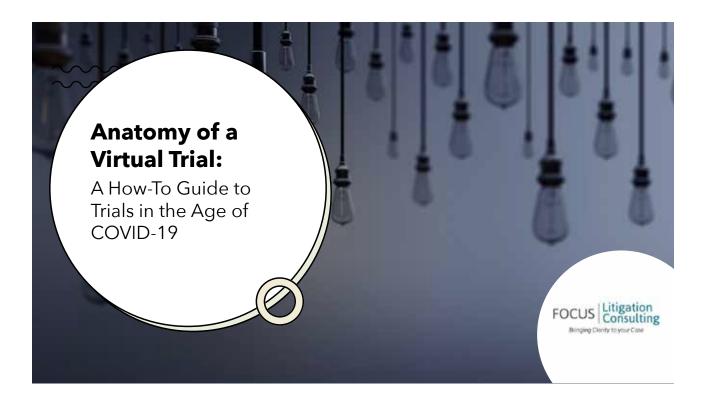
Oct. 7, 2020, 4:30-5:45 p.m.

ABI: Anatomy of a Virtual Trial: A How-To Guide to Trials in the Age of COVID-19

Hon. Frank J. Bailey; U.S. Bankruptcy Court (D. Mass.)
Dr. Geri Satin Fischman; Focus Litigation Consulting, LLC
Hon. John E. Hoffman, Jr.; U.S. Bankruptcy Court (S.D. Ohio)
Dr. Michelle M. Pena; Focus Litigation Consulting, LLC

Educational Materials

INSOLVENCY 2020 · ABI: ANATOMY OF A VIRTUAL TRIAL: A HOW-TO GUIDE





- Many things have been put on hold (including trials)
- There was an initial belief that things would be up and running after a couple of months
 - 6 months later still trying to control the pandemic, courthouses still closed
- This has led to pilot testing courtroom innovations, procedural reforms, and presentation technologies



CHANGE: DIFFICULT, BUT NECESSARY

MORE IMPORTANTLY, POSSIBLE





Going Online

- Consensus: Our in-person court system should **not** be permanently replaced with an online system
- Going online is a temporary solution that allows courts to continue operating
 - Some procedural changes may remain even post-pandemic
- Strictly online hearings, depositions, dispute resolutions and bench trials have successfully been conducted online
 - Even jury trials have been conducted online
- One solution that allows for more flexibility:
 - A hybrid format



Changes in Bankruptcy Court Procedures due to COVID-19

- Some bankruptcy courts have begun to implement operational and procedural changes to help slow the spread of COVID-19
 - These changes are useful for shifting from an entirely in-person system to a hybrid system or an entirely online system
- Changes include:
 - Requiring face masks upon entering a courthouse
 - Waiving "wet signatures"
 - Making arrangements for section 341 meetings of creditors to proceed telephonically instead of in-person
 - Extending filing deadlines



Strictly Online Trials vs Hybrid Trials

- Entirely online court proceedings and trials may not always be the answer
- The questions is When should court proceedings be held entirely online and when should a hybrid format be selected instead?
- Here is what you need to consider:
 - Time
 - Type of case and case facts
 - Witnesses
 - Number of participants

FOCUS Ungelong





 Make an easy and swift transition to online methods by learning from others who have already gone through the trial and error period

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- Several pilot programs already underway
- The Pandemic Rapid Response Team



Equipment and Other Requirements

- Computer
 - iphone, ipad, tablets, and other smaller devices are not recommended
- Webcam
- Microphone and headphones
- A quiet, private, and well-lit space
 - Business casual environment
 - Virtual backgrounds?
- Video conferencing platform account
- Dual screens
 - For technical bailiffs or others who will be sharing screens/files



Technical Bailiffs

- Technical Bailiff is someone from the court who is trained in all the technical aspects of conducting an online jury or bench trial, including:
 - Moving attendees from waiting room to main sessions
 - Renaming attendee video labels
 - Monitoring attendees (in case someone looses connection)
 - Swiftly brining attendees back into a session
 - Providing private one-on-one help during the proceeding
- Troubleshooting any video and audio problems
- Brining up documents or files to for all attendees to see (i.e., being in charge of using the screen share feature)
- · Bringing witnesses to the stand
- Making sure the meeting is being recorded



Evidence and Supporting Documentation

- What type of evidence or supporting documentation will be presented during trial?
 - Images or video files
 - Test image and video quality via shared screen
 - The number of attendees in the session and attendees' internet speed can affect image quality and presence of video lag
 - Image and video quality should be consistent across all attendees
 - PDF files or Word documents
 - Less likely to have the same quality issues that images and videos have when presenting them using shared screen feature

Share Screen Feature

- You can share documents by simply sharing your screen
 - Note: This does *not* send the document file to attendees
- Concern: Share screen feature minimizes attendees video tiles
- Double screens are needed to see both attendees and files





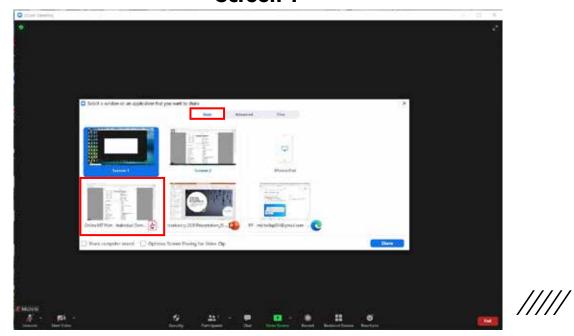
Screen 2



Screen 1



Screen 1



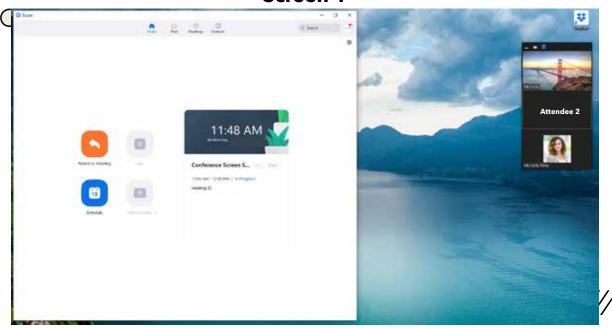
Screen 2



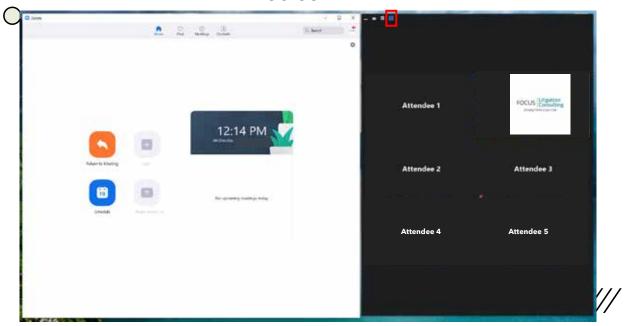
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Screen 1

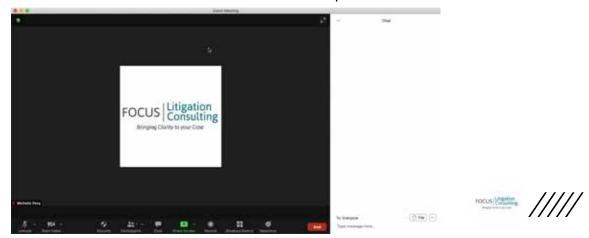


Screen 1



Sending Files and Other Documents Instantly and Securely

• Zoom file share abilities in Zoom Group Chat



Secure File Sharing Platforms

- Adobe Acrobat Pro
 - · Only for PDF files
 - Protects PDF files with passwords
 - · Prevent others from copying and editing PDFs
- Digify
 - Granular permission-based access (prevent copying, downloading, screen grabbing, printing, unauthorized distribution)
 - Ability to expire and revoke access
 - Permission-based user roles
 - · Ability to track who's looking
 - Send documents with encrypted emails and files
 - Several methods to send files (including using a simple link)
 - Most file formats supported



Secure File Sharing Platforms

- LockLizzard
 - · Only for PDF files
 - · Granular permission-based access
 - · Ability to expire and revoke access
 - Lock use to specific devices or locations (IP addresses)
- SecureDocs
 - Granular permission-based access
 - Permission-based user roles
 - · Two-factor authentication
 - · Ability to track who's looking
- Dropbox Professional and Business
 - Password protect shared links to documents
 - · Set expirations dates for shared links
 - · Disable downloads for a shared link



Concerns About the Ability to Impeach A Witness

- Major concern is how to impeach a witness during crossexamination and bringing forth proper documentation in real time
 - Attorney should have all documents saved on computer
 - Have member on trial team responsible for updating/highlighting documents being used to impeach a witness
 - Present document in real-time using share screen feature
 - Share file in real-time using a secure file sharing platform
 - Share folder with all possible documents with all parties prior to trial and only provide password or access to file/document when the moment arrives



Witnesses

- There are several pros and cons to consider when deciding to have a witness testify remotely or in-person
- Note:
 - Direct and cross examination should be on equal playing fields
 - i.e., Direct and cross should either BOTH be done remotely or BOTH be done in person
- Remote Witness
 - Pros:
 - · Safest option
 - · No need for face mask if witness is alone
 - · Close-up view of witness' face
 - · Pilot testing suggests jurors, attorneys, and judges felt it was easier to judge witness credibility
 - Cons:
 - If witness is with their attorney, face masks will be worn
 - · Similar to if they were testifying in-person
 - Only witness' upper body is in view
 - Additional witness prep needed
 - Difficult to time objections



Witnesses

- In-Person Witness
 - Pros:
 - Full view of witness' body movements
 - Ease of objecting and questioning witness
 - Cons:
 - All CDC safety guidelines must be followed including face-masks
- Remote witness examinations tend to be "clumsier"
 - But should still be considered a viable option



Witnesses and Credibility

 Major Area of Concern: Does wearing a mask affect a witness's credibility?





How Does Wearing A Mask Affect Witness Credibility?

- There are competing theories and beliefs on how wearing a mask can affect witness credibility
 - No empirical research on how face masks affect witness credibility
 - However, there has been some research to suggest that a person wearing a mask (or not) in public can elicit a strong emotional response in others
- Significant research on witness credibility, verbal and nonverbal cues, and deception detection can provide some guidance
 - Majority of research suggests that focusing on visual cues actually hinders liedetecting abilities and partial face covering may enhance the ability to discern credibility
 - · Why?
 - Greater focus on more diagnostic cues: language, content, logic, and consistency of the testimony

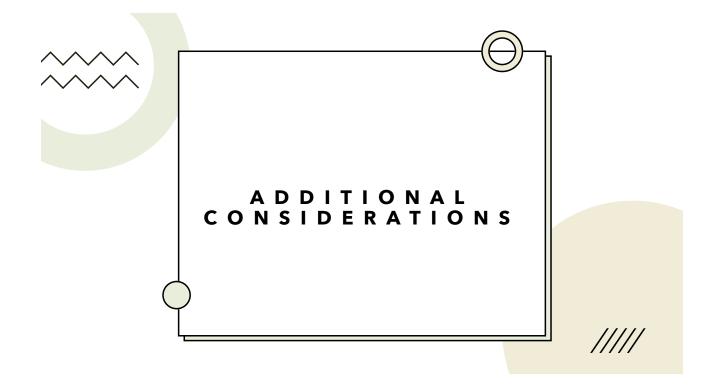




O How Does Wearing A Mask Affect Witness Credibility?

- Face masks, however, can a lead to a loss of communication
 - More difficult to understand
 - Muffled and mumbled speech
 - Unable to read lips
 - More difficult to discern between similar soundings words
- Research on the effects of speaking a second language on credibility assessments
 - The more difficult someone is to understand (e.g., due to accent) the less credible the witness is perceived to be
- Potential for increased bias and stereotyping
 - Courts should issue the same type of mask to everyone in the room





Type of View

- Gallery View vs Spotlight View on Zoom
 - Gallery View: See video of all meeting attendees at once
 - Spotlight View: See video of the one attendee who is speaking
- Useful to use Spotlight View when the focus should be entirely on one person
 - E.g., Witness examinations



Consulting Privately with Client

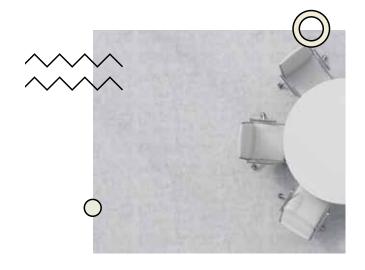
- Separate Breakout Room
 - Breakout Rooms can be setup beforehand by host
 - Host has access to join breakout room
- Private call/text
 - Turn meeting video off and mute microphone
- Microsoft Teams Chat or other messenger platform



Fatigue

- Breaks are extremely important during online proceedings
- Online proceedings can feel more tiresome than in-person proceedings for everyone involved
- **Important**: Make clear when a break is starting, how long a break will be, and at what time everyone should be back with their videos on



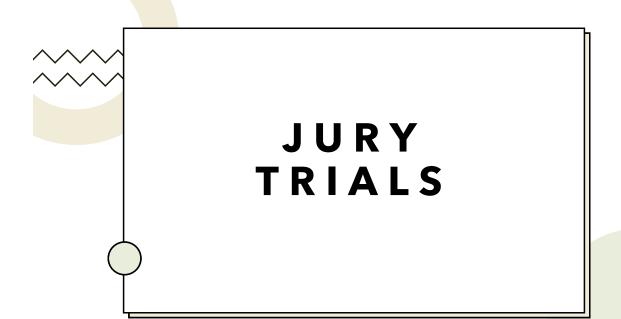


Conducting
Online
Focus Groups
&
Mock Trials

Conducting Online Mock Trials and Practice Sessions

- Shifting to more online trials and court proceedings will require a period of trial and error
- Recommend conducting mock trials, mock focus groups, and other practice sessions before going live
 - Shorten the trial and error period
 - Find out what works and what doesn't before system-wide changes are implemented
 - Practice and get comfortable with the technology and new procedures





Jury Trials in the Era of COVID-19

- In order to understand WHY online and hybrid jury trials should be considered as viable options during this pandemic, we must first understand HOW COVID-19 has impacted individual's lives and the judicial system
- We must also be mindful of how the pandemic has affected jurors' biases and attitudes toward potential future litigants (e.g., large corporations, government entities)
- It is also important to examine how the jury pool has changed since the pandemic

COVID-19: Understanding Its Effect On Individuals' Lives and the Judicial System

- Several National surveys have been conducted to examine how the current pandemic has affected:
 - Individuals' lives (emotionally, physically, and financially)
 - Individual's beliefs and attitudes toward the government and judicial system
 - Individual's willingness to attend jury duty
 - Jury pools

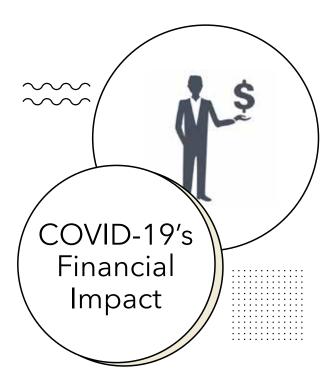


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O How Has COVID-19 Impacted Us?

- Majority of survey respondents (78%-98%) reported having been impacted by COVID-19 in some way
 - In one survey₁, 55% of respondents indicated that the pandemic had impacted their lives "very much"
 - Between 33%-55% of respondents reported being emotionally impacted
 - Between 10%-16% of respondents reported being physically impacted





- Between 52%-55% of survey respondents reported being financially impacted by the pandemic
 - In one survey1, 32% of respondents reported having lost their job or having a loved one lose their job as a direct result of the pandemic
 - In another survey2, 18% of respondents who were business owners had filed or planned to file a business insurance claim related to COVID-19
 - 59% of these respondents expect their claim to be completely covered; 36% believe it will be partially covered; and 5% expect claim to be denied
- Over 90% of survey respondents believe that the pandemic is a "major threat" to the entire U.S. economy³



Current Attitudes Toward the Government and Judicial System

- Recent surveys suggest that the pandemic has negatively affected individuals' attitudes toward the government and judicial system
 - In one survey, majority of respondents (49%) disapproved how Trump has handled the pandemic
 - Yet, majority of respondents (53%) were either very confident or somewhat confident in the governments' ability to control the pandemic
 - In another survey conducted by Vinson and Company₄, majority of respondents reported that the pandemic has negatively affected how they feel about:
 - The Federal Government
 - President Trump

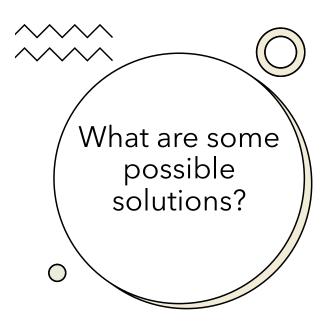


Jury Trials - Willingness to Attend Jury Duty

- Between 48%-71% of survey respondents said they would go to court in response to jury summons and participate in the jury process
 - But, people may believe that it is "unfair" to expect citizens to show up for jury duty now₅ and may feel uncomfortable doing so
 - · Biased attitudes towards the litigants
- Greater difficulty in finding a representative sample of eligible jurors
 - Low juror turnout and new juror hardship (i.e., fear of coronavirus)







• Make people feel more comfortable coming to a courthouse.



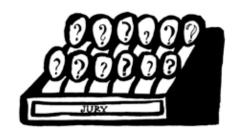
- Hybrid trials
 - Online jury summons
 - Online juror supplemental questionnaires
 - · Online voir dire





Jury Trials - What will the jury pool look like?

- Survey conducted by Dispute Dynamics⁷ suggests that respondents who indicated that they were willing to appear for jury duty were more likely than those afraid to:
 - strongly agree that the media is blowing up the current situation with the coronavirus way out of proportion
 - strongly disagree that people of color are being hit harder when companies make staffing cuts due to COVID
 - strongly disagree that discrimination on the basis of race, gender, age has gotten worse during the pandemic
 - disagree that too many corporations have put profits over safety during pandemic







Jury Trials - What will the jury pool look like?

- Survey conducted by Vinson and Co₄ suggests that those most likely to appear in court as prospective jurors:
 - are less concerned about exposure to secondhand smoke and exposure to chemicals of any kind
 - are less likely to consider COVID-19 a "very serious" problem
 - are less likely to have changed their behaviors since the pandemic began
 - are not at all worried about showing up for jury duty with a large number of other people
 - are less likely to describe their financial situation since the pandemic as "fair" or "poor"
 - are less likely to have negative views of the Federal Government and Trump







Jury Trials - What will the jury pool look like?

- Survey conducted by Decision Questal suggests that individuals' COVID-19 related attitudes and experiences can impact their perceptions of a case and the litigants:
 - The more concerned people are that they or a loved on will contract COVID-19:
 - The more pro-plaintiff they are
 - · The higher the damages they award
 - The stronger the punitive sentiments they express towards defendants
 - The more people reported their lives have been disrupted, the higher the damages they award





• For more information:

- National surveys cited in today's presentation:

 1. Decision Quest (2020). Juror Attitudes in the Ace of Coronavirus: Overview Summary of the March 2020 Survey.
 - Decision Analysis (2020). COVID-19 Insurance Survey Report.

 - Salmons Consulting (2020). How the Pandemic Is Changing Juror Worldviews. Vinson and Co (2020). Jurors in a Post-Pandemic World: What Litigators Need to Know.
 - Trial Methods (2020). Jury Trials in 2020 During COVID-19.
 - National Center for State Courts (2020). State of the State Courts in a (Post) Pandemic World: Results from A National Public Opinion Poll.
 - Dispute Dynamics (2020). Who Will Show Up for Jury Duty?
- Pandemic Resources for Courts
- https://www.ncsc.org/newsroom/public-health-emergency/pandemic-and-the-courts-resources
- Idaho's Administrative Office of the Courts created a training video for lawyers' use of Zoom for remote hearings https://vimeo.com/419993143/323566a51a
- How to guides from several states (more information on conducting remote oral arguments, including Guidelines for Attorneys and other resources)
- $\bullet \underline{ \ \, https://nationalcenterforstate courts.app.box.com/s/n7w8zu89tbayfjr0qz6h7mn6nrg0x6qh/folder/110594198866} \\ \bullet \underline{ \ \, https://nationalcenterforstate courts.app.box.com/s/nationalcenterforstate courts.app.box.com/s/nationalcenterforstate courts.app.box.com/s/natio$
- Coronavirus and the Courts:
 - https://www.ncsc.org/newsroom/public-health-emergency



Online Courtroom Project

- Website:
 - https://www.onlinecourtroom.org/
- Final Report:
 - https://www.onlinecourtroom.org/demonstration-report
- OCP Online Jury Trial Demonstrations:
 - https://www.youtube.com/channel/UCSMflKgoYvFsOLFn8Jnhb1w/pl aylists?reload=9



INSOLVENCY 2020 · ABI: ANATOMY OF A VIRTUAL TRIAL: A HOW-TO GUIDE

UNITED STATES BANKRUPTCY COURT DISTRICT OF MASSACHUSETTS

IN R	RE: Chapter Case No.
Deb	otor.
	SUPPLEMENTAL ORDER REGARDING TRIAL/EVIDENTIARY HEARING BY ZOOM.GOV VIDEO TRANSMISSION
adve	To expedite and facilitate the evidentiary hearing or trial in the above case or rsary proceeding, the Court orders as follows:
I.	GENERAL PROVISIONS
	1. Trial/Evidentiary Hearing. A trial/evidentiary hearing shall be held via video transmission on commencing at a/p.m. (the "Hearing"). This Supplemental Order provides additional requirements related to the format of the

Hearing, in addition to those requirements set forth in the Court's Pretrial Order dated _____ (Doc. No. _), as same may have been amended (the "Pretrial Order"). Should any information in this Supplemental Order conflict with the Pretrial Order, the provisions of this Supplemental Order shall govern.

2. The Need for Video. As a result of the dangers presented by the COVID-19

2. The Need for Video. As a result of the dangers presented by the COVID-19 pandemic compelling circumstances exist that constitute good cause to allow all aspects of the Hearing in the above case or adversary proceeding to proceed via video transmission rather than in person. See Fed. R. Civ. P. 43(a); see also Fed. R. Bankr. P. 9017 (making Rule 43 applicable to cases under the Bankruptcy Code). The Court finds that the procedures adopted herein will provide adequate and "appropriate safeguards" for purposes of Rule 43(a) and ensure due process of law. These procedures will: (i) enable the Court to identify, communicate with, and assess the demeanor of all witnesses in real time; (ii) enable counsel for the parties to see and hear the testimony of witnesses, interpose objections, and communicate with the Court in real time; (iii) enable the parties, the witnesses, and the Court to have simultaneous access to an identical set of pre-marked proposed exhibits; (iv) avoid any undue influence or interference with witnesses in connection with their testimony; and (v) preserve the ability of the parties to communicate with their counsel during the Hearing, as the Court deems appropriate.

- **3. Zoom.gov.** The Hearing shall take place remotely by way of Zoom Video Communications videoconference technology. All counsel and witnesses who participate in the Hearing via Zoom shall undertake appropriate set up and testing of Zoom.gov as may be required by the Court. Instructions for use of Zoom.gov can be found on the Court's website at www.mab.uscourts.gov/[location of document] ("Participant Zoom Guide for Trials and Evidentiary Hearings"). Information regarding logging in to the Hearing and accessing any prehearing orientation or rehearsal will be communicated to counsel and pro se parties after they have notified the Court as set forth in ¶ II below.
- **4. Required Equipment.** The Participant Zoom Guide for Trials and Evidentiary Hearings provides information on what equipment counsel and interested parties must have to participate in the Hearing as well as helpful tips. By participating in the Hearing, counsel and interested parties verify that they have reviewed the Participant Zoom Guide for Trials and Evidentiary Hearings and understand that the Court is unable to provide technical support.

II. INFORMATION REGARDING HEARING PARTICIPANTS

1. Limit on Participation by Video. Hearing participants are encouraged to limit video conference participation to those who are necessary to the presentation of this matter. If the number of parties wishing to participate in the Hearing, in the Court's view, exceeds the number which would permit the efficient, stable, and reliable transmission of the Hearing by video conference, the Court may require that certain parties participate in the Hearing only by telephone. The Court will provide to each party participating by telephone separate dial-in instructions, which may be used with any telephone equipment. See ¶ V, 2 below for information on General Public Access.

2. Notice of Parti	cipation. Counse	I and pro se parties (collectively "participants")			
who will be actively pa		Hearing shall notify Courtroom Deputy			
	, at	@mab.uscourts.gov no later than			
a/p.m. on	The n	otification shall include the name and email			
address of each partici	pant as well as th	eir respective roles in the matter or			
proceeding. The notifi	cation must inclu	de the telephone number at which the			
participant may be reached during the Hearing and what type of device they will be					
using. Each participant participating in the Hearing must be reasonably available for a					
test of the videoconferencing technology when notified by the Courtroom Deputy.					
Prior to the Hearing, the Courtroom Deputy will send an email to each participant					
providing the login information to appear at the Hearing by video or by telephone.					
Those who receive the Hearing login information from the Court may not forward or					
otherwise share that invitation with any other persons except that counsel may share					
the login information v	with their client in	this matter or proceeding and members of			
their firm and/or staff	as necessary. Pri	or to the day of the Hearing, the Courtroom			
Deputy will provide Hearing login information to all witnesses designated by the					
parties as set forth in •	∥III, 2 below.				

3. Participation at Hearing. All participants expecting to participate in the Hearing and question a witness must attend the Hearing via Zoom unless expressly exempted by the Court. For cause shown, filed no later than Noon of **the day prior** to the Hearing, the Court may allow an exemption and grant a participant leave to participate in the Hearing by telephonic means.

III. WITNESSES

and

- 1. **Remote Witness Testimony**. In accordance with Fed. R. Civ. P. 43(a) (made applicable by Fed. R. Bankr. P. 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. The Court finds that thedanger to public health presented by the COVID-19 pandemic merits application of this rule with regard to all witnesses who may testify at the Hearing. Each witness called to testify or be subjected to cross-examination at the Hearing shall be permitted to testify by contemporaneous transmission from a different location by video , as provided in this Supplemental Order. The Court will administer the oath to each witness during the Hearing and witness testimony will have the same effect and be binding upon each witness in the same manner as if such witness was sworn in by the Court in person in open court.
- 2. Witness Information. To provide additional safeguards for the acceptance of testimony from witnesses who are not physically present in the courthouse during the Hearing, the party sponsoring witnesses shall submit to the Courtroom Deputy , at @mab.uscourts.gov no later than a/p.m. on a list of witnesses who are reasonably anticipated to testify at the Hearing which must contain: The name and title of each witness; The matter on which the witness will provide testimony; The location of the witness (city, state, country – no addresses are required); The place from which the witness will testify (e.g. home, office - no addresses are required); the email address to which the Courtroom Deputy can send login information to the witness, which shall be sent by _____; Whether anyone will be in the room with the witness during the testimony, and if so, who (name, title, relationship to the witness), and for what purpose;

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Whether the witness will have access to any documents or electronically stored information other than exhibits described in ¶ IV, and if so, what documents or electronically stored information.

- 3. **Responsibility for Remote Witnesses**. The party sponsoring each witness shall be responsible for ensuring that the party has received the login information from the Courtroom Deputy, has obtained all proposed exhibits prior to the Hearing, has access to Zoom, and has equipment and internet service sufficient to permit participation in the Hearing. Witnesses may be required to participate in a test of the videoconferencing technology prior to the Hearing.
- 4. **Conduct During the Hearing**. When called to testify, a witness must situate himself or herself in such a manner as to be able to view the video screen and be seen by the Court. The Court, pro se parties, and counsel for the parties must be able to see clearly the entire face and shoulders of the witness and, while any witness is testifying, the witness shall not communicate with any person by any means other than through the witness's sworn testimony at the Hearing unless otherwise permitted by the Court. If a party or witness and counsel wish to communicate with one another privately, upon request and at the Court's discretion, the Cour may recess the Hearing for such purpose. The party or witness and counsel may meet privately via a Zoom breakout room or confer by telephonic or other means that are not transmitted to other participants. Counsel will be responsible for coordinating any telephonic communications between themselves and their parties and witnesses.

IV. <u>EXHIBITS</u>

- 1. **Marking Exhibits**. Each party must pre-mark copies of the proposed exhibits that the party reasonably anticipates offering at the Hearing. The parties shall identify the proposed exhibits using the following system: P01, P02, etc. for exhibits that may be offered by the Plaintiff; and D01, D02, etc. for exhibits that may be offered by the Defendant.
- 2. **Collating Exhibits.** All pre-marked proposed exhibits must be aggregated into both (i) a PDF file or files, with a table of contents and bookmarks for each individual exhibit contained in the file(s); and, if ordered by the Court, (ii) a physical binder or set of binders (the "Exhibit Books"), with a table of contents and tabs for each individual exhibit contained in the Exhibit Books. The Exhibit Books should contain cover labels conspicuously identifying the contents (to help the Court, the parties, and witnesses quickly locate the appropriate binder during the Hearing).

Delivering Ext	nibits to Opposi	ng Counsel and Court.	Each party	must send,
by e-mail, its digital	PDF collection	of pre-marked propose	d exhibits b	У
a/p.m. on	to: (i) oppo	sing counsel; and (ii) th	e Courtroor	m
Deputy,	, at	@mab.uso	courts.gov.	[OPTIONAL:

In addition to emailing exhibits, each party must deliver to the Court [insert location] Exhibit Books by [insert deadline].

4.	Delivering Exhibits to Witnesses. Whether or not the Court requires delivery of	
	Exhibit Books to the Court, each party must provide Exhibit Books to each witness	
	who may testify at the Hearing and ensure that the Exhibits Books are actually receive	d:
	by the witnesses no later thana/p.m. on	

5. **Impeachment/Rebuttal Exhibits.** If a participant wishes to use a document solely for impeachment or rebuttal that was not contained in the PDF files(s) or Exhibit Books, he must be prepared to simultaneously email a PDF copy of the document to the Court and the witness during the Hearing. The Zoom host will then display the document on the screen, and the Court will preserve a copy of the document for the record if the document is accepted into evidence.

V. ADDITIONAL PROVISIONS

- Courtroom Formalities. Although it will be conducted by video, the
 Hearing constitutes a court proceeding and all formalities of a court proceeding must
 be observed in all respects, including proper decorum and attire.
- 2. **General Public Access**. The Hearing is open to the general public. The public is invited to listen to the Hearing by telephone. Any person wishing to listen to the Hearing by telephone must email the Courtroom Deputy no later than 24 hours prior to the start of the Hearing, otherwise telephonic information may not be made available.
- 3. **Recording Prohibited; Official Record**. No person may record the Hearing from any location by any means. The audio recording maintained by the Court will be the sole basis for creation of a transcript that constitutes the official record of the Hearing.
- 4. **Failure to Comply with This Order.** Failure to appear at the Hearing or to comply with any terms of this Supplemental Order, including the deadlines set forth herein, may result in the imposition of sanctions on a witness, party, or counsel by, *inter alia*, reprimand, fine, award of attorneys' fees, exclusion of proposed exhibits, prohibition against a party from offering testimony, and/or the entry of a dismissal or default, all as the circumstances warrant.

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

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

AGREED ORDER ESTABLISHING PROCEDURES FOR TELEPHONIC AND/OR VIRTUAL HEARING SCHEDULED FOR APRIL 14, 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"), 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, 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 Interim Relief Under Sections 1113 and 1114 of the Bankruptcy Code [Docket No. 1110] (the "1113 and 1114 Motion"), (ii) CONSOL Energy Inc. and Affiliates' Limited Objection to Debtors' Motion for Entry of Interim Relief Under Sections 1113(e) and 1114(h) of the Bankruptcy Code [Docket No. 1159] (the "CONSOL Objection") (iii) UMWA 1993 Plan's Limited Objection to Debtors' Motion for Interim Relief Under Sections 1113 and 1114 of the Bankruptcy Code [Docket No. 1166] ("Funds Objection"), and the Court having reviewed the record and being fully advised,

IT IS HEREBY AGREED AND ORDERED that:

1. <u>Telephonic and Video Conferencing Solutions</u>. The hearing scheduled for Tuesday, April 14, 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-

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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. <u>Limit on Video Conferencing</u>. 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 Friday, April 10, 2020. The Court will circulate the Skype link to all Parties participating via Skype prior to the hearing.

- 4. <u>Submission of Exhibits to Court</u>. Parties submitting exhibits related to the 1113 and 1114 Motion, the CONSOL Objection, and/or the Funds 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. <u>Form of Exhibits</u>. 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 separately.
- 6. <u>Filing and Service of Exhibits</u>. 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 1113 and 1114 Motion, CONSOL Objection, and/or Funds 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

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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 the telephone, 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. To the extent there is an error or malfunction with Skype or other video conferencing solution, the Remote Witness may be sworn in and testify via telephone only.
- 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 Ren	note Witness	s prior to th	e hearing	and th	at the	Remote	Witness	has	been	registered	with
CourtSolu	tions and Sk	type, as app	licable.								

SO ORDERED.

Copies to Default List.

AGREED TO AND TENDERED BY:

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U.S. BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS PARTICIPANT GUIDE FOR VIDEO HEARINGS

The following information is designed to assist those participating in hearings held by video. Please note that the Court may require some parties to attend the video hearings by telephone only. The Court will hold the hearings by Zoomgov.com video conference technology ("Zoom"), which is available without charge for all parties attending the hearing.

Important Reminders:

- 1. Any audio recording or capturing of images of any video hearing is prohibited and violations of this prohibition may result in sanctions. *See* MLBR 9037-1.
- 2. A hearing held by video is an official court hearing and participants are cautioned to act and dress accordingly.
- 3. The Court will not provide technical support to those participating in video hearings.

I. Before Attending a Video Hearing

A. Hardware and Software

Those participating in a video hearing must have access to the following hardware and software prior to attending the hearing:

- 1. A computer, laptop, or tablet connected to a power source (smartphones are discouraged as the performance is inferior);
- 2. Internet access (wired/ethernet connections are recommended, if possible);
- 3. A camera for video input;
- 4. Speakers or headphones to hear audio (if necessary for the individual or circumstances);
- 5. Microphone for speaking (testing the microphone prior to the hearing and having a headphone with a built-in microphone, as well as a backup microphone, is recommended); and
- 6. Access to Zoom. This can be accomplished by downloading and installing Zoom Client for Meeting at https://zoom.us/download OR by clicking on your email notification "Join Meeting Now" link sent by the Courtroom Deputy prior to the hearing and following install client prompts. For tablets and smartphones, download the Zoom Cloud Meetings app from the Google Play or Apple Store.

B. Required Tutorial

Zoom provides tutorials for those unfamiliar with the platform. The Court requires that all who participate in a video hearing watch the Zoom tutorial, Getting Stated with Zoom Meetings, which can be found at

U.S. BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS PARTICIPANT GUIDE FOR VIDEO HEARINGS

livetraining.zoom.us

II. Hearing Notification for Parties

A. Trial/Evidentiary Hearing

If the hearing is a trial or an evidentiary hearing in an adversary proceeding or contested matter, the parties to the hearing will receive from the Court a Supplemental Order Regarding Trial/Evidentiary Hearing by Video ("Supplemental Order"). The Supplemental Order will set forth the conduct, obligations, and other requirements for all parties participating in the hearing including counsel, pro se parties, and witnesses and will provide instructions for how to attend the hearing by video or telephone. You must review the Supplemental Order prior to the hearing, and you will be bound by its provisions. After you notify the Court you will attend the hearing, and the Court verifies your role, you will receive an email notification from the Courtroom Deputy prior to the hearing with the login information to appear at the hearing by video or, if applicable, the dial-in information to appear by telephone.

B. Nonevidentiary Hearing

If the hearing is a nonevidentiary hearing, the Court will issue a notice or order for individuals with general information and how to obtain login information.

C. Further Hearing Notification Information

If you are appearing by video, the notification will include a link to "Join Zoom Meeting" as well as a Meeting ID, Meeting Password, and Dial-in Telephone number. Kindly follow the steps in ¶ V below at least 30 minutes prior to the hearing to ensure that you can successfully connect and to test your system. You must make reasonable efforts to be available for a video test of Zoom when/if notified by the Courtroom Deputy.

U.S. BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS PARTICIPANT GUIDE FOR VIDEO HEARINGS

III. General Public Access

Video hearings are open to the general public. The public is invited to listen to a hearing by telephone. Any person wishing to listen to a hearing must email the applicable Courtroom Deputy at the email address located in the Supplemental Order or on our website at:

http://www.mab.uscourts.gov/mab/judges-and-phone-numbers. Please note that if a request is not made at least one business day before the Hearing, the Courtroom Deputy may not be able to respond.

IV. Media Access

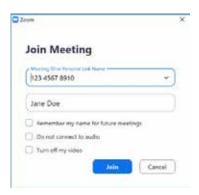
Members of the press who seek to observe by video or telephone shall follow the instructions located on our website, http://www.mab.uscourts.gov/mab/media-requirements.

- V. Additional Zoom Information and Frequently Asked Questions.
 - A. Information Regarding Joining the Zoom Hearing By Video on a Computer or Laptop
 - 1. Open Start Zoom on your computer (see #6 above) and select Join a Meeting



- 2. In the Join Meeting screen:
 - Enter the Meeting ID number located in the Court's email notification
 - Enter your first and last name as your Display Name
 - Uncheck all 3 boxes
 - Click on Join

U.S. BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS PARTICIPANT GUIDE FOR VIDEO HEARINGS



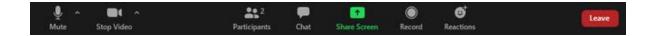
 Next, enter the Meeting Password (located in the Court's email notification) and click on Join Meeting



4. When you first join the hearing, you will be placed in a Waiting Room. You will see the message "Please wait, the host will let you in soon" as well as a warning regarding recording or otherwise capturing images of the hearing. When the Court is ready, the Courtroom Deputy will admit you to the virtual courtroom and provide further information.

U.S. BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS PARTICIPANT GUIDE FOR VIDEO HEARINGS

B. Information About Meeting Control Panel Functions



Mute – use to mute/unmute your microphone. Click on the up arrow (next to the Mute icon) to adjust your audio settings. The host may mute/unmute you during the proceeding.

Video – use to start/stop your video. Participants are required to have video turned on. Click on the up arrow (next to the Video icon) to adjust your video settings.

Participants – use to view a list of all participants attending this hearing. This feature may be limited or disabled by the host.

Chat – use to send a chat message. This function will be disabled.

Share Screen – use to start sharing a screen or an application window on your computer with others in the meeting, including documents stored in a file on your computer. This function can only be used as permitted by the Court and will allow you to present documentary evidence to the Court. Click the green up arrow to reveal sharing options, sharing your entire monitor or just one open window/program (i.e., the entirety of what is on the screen or just a single open PDF/photograph). The hearing participants will remain on the screen allowing you to see both document you are sharing and the hearing participants. To end screen sharing, click on the red button on top of the screen which is only visible while you are sharing your screen.

Record – this function will be disabled. Video trials/evidentiary proceedings may not be recorded or otherwise captured from any location by any means.

Reactions – this function will be disabled.

Leave – use to leave the meeting.

U.S. BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS PARTICIPANT GUIDE FOR VIDEO HEARINGS

C. Information Regarding View Options

To see all hearing participants, choose "gallery view" or to see just the person speaking, choose "speaker view."

D. Information For Presenting Evidence

Those presenting exhibits will utilize the Share Screen option on Zoom and must ensure prior to the hearing that they are able to use Share Screen for identification and introduction into evidence of their exhibits. The exhibits must be open so they are ready to be shared.

E. Frequently Asked Questions

What do I do if I get disconnected?

If you get disconnected, call in to the hearing using the dial-in number provided in your email notification.

Can I record a Zoom Hearing or photograph the screen?

No. No hearing may be recorded or otherwise captured from any location by any means.

Will my telephone number be visible if I call in?

No, the Courtroom Deputy will change your Display Name according to standard protocols.

If the Supplemental Order so indicates, do I have to be on video?

Yes, unless you are a member of the general public or you are a party, counsel, or witness and you are expressly exempted by the Court.

Do you have tips for a video appearance?

Yes, make sure the camera is at eye level. You may want to put your device on a stack of books so you can be hands-free and look directly at the camera while talking. Avoid moving around with your device during the proceeding. Avoid speaking to someone not in the proceeding. To see your face clearly, avoid having bright light behind or beside you and sit so that your entire face and shoulders occupy much of the screen. Avoid distracting real or virtual backgrounds.

U.S. BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS PARTICIPANT GUIDE FOR VIDEO HEARINGS

What if I want to speak with my representative (or client) privately?

Request that the Court permit you to speak with your representative (or client) privately. The Court may excuse you to a private breakout room or provide further direction as appropriate.

What is a breakout room?

A breakout room is a separate meeting space, apart from the main virtual courtroom. Breakout rooms are private, and only the participants in the room can see or hear what is going on in them. Discussions in the breakout rooms are not recorded and not considered part of the official proceeding or the record of the hearing.

Can I obtain a transcript of a Zoom hearing?

The procedures for obtaining a transcript of a Zoom hearing is the same as for all hearings before the Court. See http://www.mab.uscourts.gov/mab/obtain-case-documents for further information.

Do you have further Zoom training suggestions?

Yes. Zoom provides training resources at https://support.zoom.us.

FILED

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF OHIO

2020 AUG 21 PM 1:58

RICHARD JONES CLERK OF COURT U.S. BANKRUPTCY COURT CONCANNATI, OHIO

In re:

ORDER REGARDING VIRTUAL HEARINGS

General Order No. 44-1

The Court issues this General Order in response to the COVID-19 public health emergency and the continuing recommendations from the Centers for Disease Control and Prevention, the Ohio Department of Health, and the Administrative Office of the United States Courts to exercise caution during the pandemic. With General Order 35-1 and its subsequent amendments, the Court has adopted procedures to conduct non-evidentiary hearings telephonically. This General Order is intended to supplement General Order 35 and to provide notice of the general requirements and expectations for all virtual hearings in the Bankruptcy Court for the Southern District of Ohio.

Carefully monitor the presiding judge's individual page on the Court's website (https://www.ohsb.uscourts.gov/) to be aware of his or her specific procedures.

The following is applicable to all virtual hearings:

1. Platforms

- a. The presiding judge maintains the discretion to conduct any hearing—whether evidentiary or non-evidentiary—telephonically, through videoconferencing technology, or using a combination of both (all a "Virtual Hearing").
- b. For any Virtual Hearing, the presiding judge reserves the right to choose the platform employed for audio (the "<u>Audio Platform</u>") (e.g., AT&T conference line, CourtCall, CourtSolutions) and/or video (the "<u>Video Platform</u>") (e.g., Skype, Zoom for Government, Microsoft Teams, GoToMeeting).

2. Required Equipment

a. For any Virtual Hearing using an Audio Platform, each attorney and each Remote Witness (defined below) must have access to a telephone. If possible, parties appearing telephonically should use a landline rather than a cell phone. If a cell phone is used, parties shall ensure that they have a strong cellular phone system or use the Wi-Fi calling option on their phones. Parties shall not use cell phones while in public spaces or while driving or riding in an automobile.



- b. For any Virtual Hearing using a Video Platform, each attorney and each Remote Witness must have access to a computer, tablet, phone, or other device equipped with (i) a camera, (ii) an internet connection sufficient to support the applicable Video Platform, and (iii) a microphone. In lieu of a microphone, many Video Platforms also have the option of using a telephone for audio.
- c. For any Virtual Hearing, each attorney and Remote Witness must be able to access exhibits in Portable Document Format ("PDF") through the use of a PDF reader (e.g., Adobe Acrobat Reader, Apple Books). If a Remote Witness does not have access to a program for viewing PDF files, the party sponsoring the Remote Witness shall ensure the Remote Witness has a printed copy of all exhibits.

3. Exhibits and Testimony

- a. In advance of any Virtual Hearing, parties will be expected to provide to each other and to the Court electronic copies of exhibits in PDF format. A party's exhibits should be combined into a single PDF file and each individual exhibit should be labeled and, to the extent possible, bookmarked to ensure easy navigation.
 - Some judges may require that exhibits be filed on the docket; others may require that exhibits be emailed. Parties should familiarize themselves with the presiding judge's policies and procedures on the provision of exhibits.
- b. 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, unless ordered otherwise in a particular case, any witness called to testify or subject to cross-examination in relation to a Virtual Hearing shall be permitted to testify by contemporaneous transmission from a different location ("Remote Witness").
- c. All Remote Witnesses shall be sworn in virtually by the presiding judge or other court employee, and such testimony will have the same effect as if such Remote Witness was sworn in person in open court at the courthouse.
- d. As an additional safeguard for the allowance of a Remote Witness, the presiding judge may require the Remote Witness or the party sponsoring the Remote Witness to provide certain information. The Remote Witness and/or the sponsoring party should be prepared to provide the information such as: (i) the location of the Remote Witness (city, state, country); (ii) the place from which the Remote Witness will testify (e.g., home, office); (iii) whether anyone is or will be in the room with the Remote Witness during the testimony, and if so, who and for what purpose; and (iv) whether the Remote Witness will have access to any documents other than exhibits provided to the Court and the parties, and if so, what documents.
- e. The party sponsoring a Remote Witness shall be responsible for ensuring that any applicable dial-in information, any applicable link for the Video Platform, and all exhibits are supplied to the Remote Witness before the Virtual Hearing.

4. Recordings

a. Other than official court reporters and official electronic recorders employed by the Court, no party shall be permitted to record any Virtual Hearing. Local Bankruptcy Rule 5073-1, which prohibits the use of cameras or other recording devices where judicial proceedings are being conducted, applies to Virtual Hearings.

5. General Recommendations

- a. Parties should carefully review the presiding judge's webpage and any scheduling orders or other orders entered in the particular case for specific policies and procedures. After such review, parties may contact the presiding judge's courtroom deputy with any procedural questions or concerns.
- Parties should carefully monitor their email in advance of hearings to ensure receipt of any necessary instructions, dial-in information, or links for Video Platforms.
- c. Parties should mute their phones when not addressing the Court to prevent background noise, which is distracting to participants and interferes with the record.
- d. Parties should, where possible, avoid speaker phone, Bluetooth, and other handsfree features when addressing the Court, as these features can cause interference.
- e. Successful Virtual Hearings require the cooperation of all participants. Parties should continue to exercise patience and care in the course of their participation in Virtual Hearings to maximize the swift and orderly administration of justice during this public health emergency. To that end, every party should: (i) wait until called upon to speak; (ii) announce his or her name for the record each time the party speaks; (iii) make an effort to speak slowly, clearly, and concisely; and (iv) pause before speaking and avoid speaking over or interrupting other parties and the Court.

FOR THE COURT

ery P. Hopkins

United States Bankruptcy Court Southern District of Ohio

IT IS SO ORDERED.

Dated: August 21, 2020

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: April 11, 2020



John E. Hoffman, Jr. United States Bankruptcy Judge

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

) Chapter 11
) Case No. 20-10390 (JEH)
) Judge John E. Hoffman, Ji
) (Jointly Administered)

AGREED ORDER ESTABLISHING PROCEDURES FOR TELEPHONIC AND/OR VIRTUAL HEARING SCHEDULED FOR APRIL 14, 2020, AS A RESULT OF THE COVID-19 PANDEMIC [RELATED TO DOCKET NO. 361]

The above-captioned debtors and debtors in possession (collectively, the "<u>Debtors</u>"), the Official Committee of Unsecured Creditors (the "<u>UCC</u>"), the Ad Hoc Group of Prepetition Term Loan Lenders (the "<u>Ad Hoc Group</u>"), Murray Energy Holdings Co. and its affiliated debtors (the "<u>Murray Energy Debtors</u>", and collectively with the Debtors, the UCC, the Ad Hoc Group, the

¹ The Debtors in these Chapter 11 cases, along with the last four (4) digits of each Debtor's federal tax identification number, if applicable, are: Murray Metallurgical Coal Holdings, LLC (4633); Murray Eagle Mining, LLC (4268); Murray Alabama Minerals, LLC (4047); Murray Alabama Coal, LLC (3838); Murray Maple Eagle Coal, LLC (4435); and Murray Oak Grove Coal, LLC (4878). The Debtors' primary business address is 46226 National Road, St. Clairsville, OH 43950.

Murray Energy Debtors, 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 *Motion of the Official Committee of Unsecured Creditors for Entry of an Order Granting it Standing and Authorizing it to Prosecute and Settle Certain Claims on Behalf of the Debtors' Estates* [Docket No. 361] (the "UCC Standing Motion"), and the Court having reviewed the record and being fully advised,

IT IS HEREBY AGREED AND ORDERED that:

- 1. <u>Telephonic and Video Conferencing Solutions</u>. The hearing scheduled for Tuesday, April 14, 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. <u>Limit on Video Conferencing</u>. 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 Saturday, April 11, 2020. The Court will circulate the Skype link to all Parties participating via Skype prior to the hearing.
- 4. <u>Submission of Exhibits to Court</u>. Parties submitting exhibits related to the UCC Standing Motion shall send all exhibits to Hoffman282@ohsb.uscourts.gov via electronic mail in .pdf format no later than 4:00 p.m. prevailing Eastern Time on Saturday, April 11, 2020. 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 *Supplemental Order Implementing Certain Notice and Case Management Procedures* [Docket No. 317] (the "Case Management Order").

- 5. <u>Form of Exhibits</u>. 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 separately.
- 6. <u>Filing and Service of Exhibits</u>. 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 UCC Standing Motion 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 4:00 p.m. prevailing Eastern Time on Saturday, April 11, 2020, 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 no later than 4:00 p.m. prevailing Eastern Time on Saturday, April 11, 2020.

9. <u>Swearing In of Remote Witnesses</u>. All Remote Witnesses shall be sworn in over the telephone, 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. To the extent there is an error or malfunction with Skype or other video conferencing solution, the Remote Witness may be sworn in and testify via telephone only.

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.

SO ORDERED.

Copies to Default List.

AGREED TO AND SUBMITTED BY:

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Hon. Frank J. Bailey was appointed as a U.S. Bankruptcy Judge for the District of Massachusetts in Boston on Jan. 30, 2009, and served as Chief Judge from December 2010 until December 2015. He also serves on the First Circuit Bankruptcy Appellate Panel. Previously, Judge Bailey clerked for Hon. Herbert P. Wilkins of the Massachusetts Supreme Judicial Court from 1980-81 and was an associate at the Boston office of Sullivan & Worcester LLP until 1987, where he practiced in its litigation and bankruptcy departments. He spent the next 22 years as a partner at Sherin and Lodgen LLP, where he chaired its litigation department and was a member of its management committee. His practice focused on complex business litigation and creditors' rights, and he often represented clients in medical device, pharmaceutical and high-technology businesses. Judge Bailey served as the consul for the Republic of Bulgaria in Boston before his appointment to the bench, and he has participated in many international judicial programs. In 2013, he taught at the Astrakhan State University School of Law in south central Russia, and he has also taught courses in Sofia, Bulgaria and Tashkent, Uzbekistan. In addition, he taught legal writing and research at Boston University School of Law from 1981-93 and currently teaches business reorganizations at Suffolk University Law School in Boston. Judge Bailey was appointed by the First Circuit to oversee the financial restructuring of the City of Central Falls, R.I. He has served on the Board of Governors of the National Conference of Bankruptcy Judges and was its Education Committee Chair in 2017. Beginning in October 2019, he will serve as NCBJ's president-elect. In addition, he is past chair of the National Conference of Federal Trial Judges of the American Bar Association and currently serves as the Judicial Member at Large on the ABA Board of Governors. Judge Bailey received his B.S.F.S. from Georgetown University's School of Foreign Service and his J.D. from Suffolk University School of Law.

Dr. Geri Satin Fischman is senior trial consultant and a founding partner at Focus Litigation Consulting, LLC in Miami, where she specializes in juror behavior and decision-making, as well as the analysis of complex evidentiary and witness issues in civil and criminal cases involving tort, contract, fraud, intellectual property, professional malpractice, banking/securities and product liability across the country. Through the use of mock trials, focus groups and surveys, she assists attorneys, in-house counsel, insurers and companies in the development of persuasive case themes and strategies, jury selection and case valuation. As a former complex commercial litigator and certified image consultant, Dr. Satin Fischman also specializes in witness preparation, arming clients with strategic visual presentation techniques and tools to create credibility, authenticity and likeability, as well as to increase persuasion and advocacy in the courtroom. Her clients include government institutions and Fortune 500 companies, as well as local, regional, national and international law firms. Dr. Satin Fischman's work has been published in leading academic and applied social science journals, including Law and Human Behavior and Forensic Science. Additionally, she regularly lectures on topics related to jury research and trial consulting across the country, including at the U.S. Securities and Exchange Commission's trial lawyers conference in Washington, D.C. Dr. Satin Fischman also teaches courses on legal psychology at Florida International University and jury selection at the University of Miami School of Law as part of its Litigation Skills program. Prior to joining Focus Litigation Consulting, LLC, she spent a number of years practicing complex commercial litigation at one of Florida's premier and largest law firms, where she represented corporate and institutional clients in courts and forums across the country, including, but not limited to, Florida, New York, Pennsylvania and California state courts, the U.S. District Court for the Southern, Middle and Northern Districts of Florida,

the Southern District of New York, District of Connecticut and District of Hawaii, the U.S. Courts of Appeals for the Second and Eleventh Circuits, the International Centre for Dispute Resolution, the American Arbitration Association and the Delaware Court of Chancery. Dr. Satin Fischman is a member of the Implicit Bias Research Team of the American Society of Trial Consultants (ASTC). as well as a member of the ASTC's Civil Jury Project Task Force. She also serves on a Florida Bar Eleventh Judicial Circuit Grievance Committee and is the membership co-chair of the Miami-Dade Florida Association of Women Lawyers. Dr. Satin Fischman is a former Dade County Bar Association Board Member (and a past president of the Dade County Bar Association, YLS), and has spearheaded award-winning programming for the Association, including the annual Bench and Bar Conference, Bar Passage Program and annual Superlawyers CLE Mock Trial. Dr. Satin Fischman received dual undergraduate degrees in English (linguistics/writing) and criminology Phi Beta Kappa from the University of Florida and her J.D. magna cum laude from the University of Miami School of Law, where she served as an editor of the *University of Miami Law Review*. She received her Ph.D. in legal psychology from Florida International University, where she conducted research on cognition, perception and juror decision-making. While at FIU, she worked with more than 200 federal and local law enforcement officers to examine the efficacy of training on the Cognitive Interview, and was awarded the FIU College of Arts and Sciences' Psychology Best Thesis Award.

Hon. John E. Hoffman, Jr. is a U.S. Bankruptcy Judge for the Southern District of Ohio in Columbus, appointed in 2000. Previously, he was a partner in the Columbus office of Arter & Hadden LLP, where he practiced primarily in the areas of bankruptcy and commercial litigation, focusing on the representation of chapter 11 debtors and creditors' committees. He joined Arter & Hadden in 1989 after completing a judicial clerkship with Hon. R. Guy Cole, Jr., formerly a bankruptcy judge and now Chief Judge of the U.S. Court of Appeals for the Sixth Circuit. Judge Hoffman has been involved in several national and local organizations dedicated to improving the administration of the bankruptcy system and the practice of law in the bankruptcy courts. He is a Fellow in the American College of Bankruptcy and a conferee of the National Bankruptcy Conference, and has served the National Conference of Bankruptcy Judges as a member and chair of its Education Committee, a member of its Elections Committee, a member and chair of the board of directors of its Endowment for Education, and a member of its board of governors for a three-year term commencing in November 2018. In April 2013, Chief Justice Roberts reappointed Judge Hoffman to a second three-year term on the Federal Judicial Center's Committee on Bankruptcy Judge Education. He is also a member of ABI and previously chaired the Columbus Bar Association's Bankruptcy Committee. Judge Hoffman teaches business bankruptcy as an adjunct professor of law at The Ohio State University Moritz College of Law, where he sits on the law school's National Council. In 2015, the Moritz College of Law presented Judge Hoffman with the William K. Thomas Distinguished Jurist Award, which recognizes personal integrity and commitment to fairness, freedom and equality. In 2016, he received the Excellence in Public Service Award from the Moritz College of Law's Public Interest Law Foundation. Judge Hoffman also has worked to make legal services available to those who cannot afford them. having served on the Board of Trustees for The Legal Aid Society of Columbus from 1995-2000. For his work, he received the Award for Outstanding Pro Bono Service by a Judge from the Columbus Bar Association and Columbus Bar Foundation in 2012, and in 2015 had the honor of being presented with the Ohio State Bar Association's John and Ginny Elam Pro Bono Award, which is given in recognition of "exceptional volunteer service by a lawyer that advances the common good of the people of Ohio." Judge Hoffman received his B.A. summa cum laude from Wheeling Jesuit University in 1980 and his J.D. magna cum laude from The Ohio State University Moritz College of Law in 1983.

Dr. Michelle M. Pena is a trial consultant and research analyst with Focus Litigation Consulting, LLC in Miami, and her practice areas are civil and commercial litigation, as well as securities law. She facilitates pre-trial research projects for both plaintiffs and defendants in federal and state court cases across the country. Dr. Pena specializes in quantitative jury research analyses, including, but not limited to, juror profiling, descriptive verdict analyses and witness credibility assessments. She also assists with jury selection, focusing specifically on individualized prospective juror background and social media searches in real time in the courtroom. Dr. Pena has conducted research on confirmation bias, detecting deception, source-monitoring, misinformation in eyewitness memory, investigative interviewing and legal actors' decision-making. As part of her time at FIU, she conducted a threephase experimental study investigating lie detection in nonnative speakers. She also worked as a graduate research assistant for the high-value detainee interrogation group of the Federal Bureau of Investigation. Dr. Pena has been published in Memory, Psychology, Public Policy & Law, The Police Chief and Psychology of Consciousness: Theory, Research and Practice, and she has presented her research at numerous legal psychology conferences, including the American Psychology-Law Society Annual Conference, the Association for Psychological Science convention, the biannual meeting of the Society for Applied Research in Memory and Cognition, and the annual meeting of the FBI's High Value Detainee Interrogation Group. She received dual degrees in psychology and criminal justice magna cum laude, and her Ph.D. in legal psychology with a minor in statistics, from Florida International University.