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**IT IS SO ORDERED.**

**Dated: February 23, 2024**



**John E. Hoffman, Jr.**  
**United States Bankruptcy Judge**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

*In re:* :  
: Case No. 19-56885  
MURRAY ENERGY : Chapter 11  
HOLDINGS CO., *et al.*, : Judge Hoffman  
: :  
*Debtors.* : (Jointly Administered)

**MEMORANDUM OPINION AND ORDER DENYING PLAN ADMINISTRATOR’S RECONSIDERATION MOTION (DOC. 3182)**

**I. Introduction**

This dispute involves secured proofs of claim filed in the Chapter 11 cases of Murray Energy Holdings Co. and its affiliated debtors and debtors in possession (collectively, “Debtors”). Drivetrain, LLC (“Drivetrain”), the plan administrator appointed under the Debtors’ Chapter 11 plan, seeks to reclassify the claims as unsecured. It does so based on an argument that was not made in the objection to the claims, but rather was made for the first time in Drivetrain’s motion for reconsideration of the Court’s order holding that the claims could not be reclassified as unsecured. Because an argument not made in a claim objection but instead made for the first time

in a motion for reconsideration is waived, and because judicial estoppel bars the argument on which Drivetrain relies, the motion is denied.

## II. Jurisdiction and Constitutional Authority

The Court has jurisdiction to hear and determine this matter under 28 U.S.C. § 1334(b) and the general order of reference entered in this district in accordance with 28 U.S.C. § 157(a). The allowance or disallowance of claims against the estate is a core proceeding. 28 U.S.C. § 157(b)(2)(B). Because the dispute “stems from the bankruptcy itself,” the Court also has the constitutional authority to enter a final order. *Stern v. Marshall*, 564 U.S. 462, 499 (2011). *See also Waldman v. Stone*, 698 F.3d 910, 920 (6th Cir. 2012) (“[D]isallowance [of] claims [is] part and parcel of the claims-allowance process in bankruptcy. Under *Stern*, therefore, the bankruptcy court was authorized to enter final judgment as to these claims.”) (cleaned up).

## III. Background

The claimant asserting the proofs of claim at issue is Pillar Innovations, LLC (“Pillar”). The claims, denominated as claim numbers 1106, 1107, 1114, 1117 and 1123 (“Pillar Claims”),<sup>1</sup> are based on Pillar’s mechanic’s liens (“West Virginia Liens”) on property located in West Virginia that the Debtors sold as part of their confirmed Chapter 11 plan (“Plan”) (Doc. 2082, Ex. 1). Pillar asserted secured claims against the five Debtor entities (collectively, “West Virginia Debtors”) listed below:

- The Harrison County Coal Company (Claim No. 1106);
- The Marshall County Coal Company (Claim No. 1107);
- The Ohio County Coal Company (Claim No. 1114);
- The Monongalia County Coal Company (Claim No. 1117); and
- The Marion County Coal Company (Claim No. 1123).

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<sup>1</sup> The proofs of claim are available at <https://cases.ra.kroll.com/murrayenergy/Home-ClaimInfo>.

Before confirmation of the Plan, the Debtors filed an objection to the Pillar Claims and other mechanic's lien claims ("Objection") (Doc. 1749). The Objection is now being prosecuted by Drivetrain.

In the Objection, the Debtors argued that the liens granted to the lenders who extended the superpriority term loans ("Superpriority Term Loans") were first-in-time and therefore had priority over the West Virginia Liens and other mechanic's liens. *See* Obj. at 6. They also asserted that the total amount owed the Superpriority Term Loan lenders was so great that the collateral securing the associated liens ("Superpriority Liens") was not of sufficient value—with value being measured by the successful credit bid for substantially all of the Debtors' assets made by Murray Newco<sup>2</sup>—for the Pillar Claims or the other mechanic's lien claims to be secured. *See* Reply in Supp. of Obj., Doc. 2068 at 16 ("[T]he winning bid for the purchase of substantially all of the Debtors' assets came in the form of a credit bid purchase price of \$1.2 billion of the approximately \$1.7 billion in outstanding Superpriority Term Loans.").

In other words, when the Debtors objected to the secured status of Pillar's Pillar Claims, they argued that: (1) the Superpriority Liens had priority over the West Virginia Liens; and (2) the credit bid for substantially all of the Debtors' assets was insufficient to fully satisfy the funded debt claims held by the Superpriority Term Loan lenders, meaning that there was no value left over to secure the Pillar Claims. *See id.* Importantly, the Debtors did not argue that if the West Virginia Liens had priority over the Superpriority Liens, then the collateral specifically securing the Pillar Claims ("Pillar Collateral")—which would be the assets of the West Virginia Debtors

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<sup>2</sup> Murray Newco was the entity formed by the holders of debt under the Superpriority Term Loans to buy substantially all of the assets of the Debtors for \$1 billion. Murray Newco later changed its name to American Consolidated Natural Resources ("ACNR"), the entity now operating some or all of the mines previously operated by the West Virginia Debtors.

rather than substantially all the Debtors' assets—would have to be valued before Pillar's claims could be classified as fully secured ("Collateral-Valuation Argument").

As it turns out, this Court found that the West Virginia Liens indeed had priority over the Superpriority Liens. This is because the Debtors that granted the Superpriority Liens "held only title to the subsurface estates and the right to use the surface for mining purposes and did not hold title to the surface estates[.]" *In re Murray Energy Holdings Co.*, 638 B.R. 588, 590 (Bankr. S.D. Ohio 2022) ("*Murray I*"). "Title to the surface estates was held either by a non-debtor or another Debtor that did not grant a mortgage to the lenders." *Id.* To attempt to get around the fact that the Debtors that granted the Superpriority Liens lacked title to the surface estates of the relevant properties, Drivetrain sought summary judgment on the Objection based on its "bundle of sticks" argument. *See id.* That argument was, in short, that an entity that owns a subsurface estate, and has the right to use the surface for mining purposes, has enough "sticks" in its bundle of property rights to afford it the right to mortgage the surface estate. *See id.* at 593–94. Drivetrain and Pillar stipulated that the bundle of sticks argument applied to the Pillar Claims. Joint Stipulation Regarding the "Bundle of Sticks" Argument, Doc. 2850 at 6–7.

The Court rejected the bundle of sticks argument and denied Drivetrain's motion for summary judgment to the extent it sought to reclassify mechanic's lien claims as unsecured based on that theory. *Murray I*, 638 B.R. at 590. In a later opinion based on its rejection of the bundle of sticks argument, the Court granted summary judgment for Pillar, holding that the Pillar Claims "may not be reclassified as general, unsecured claims," and "shall retain their priority over the claims of the [Superpriority] Lenders, secured to the extent of the value available upon exercise of Pillar's foreclosure remedies against the [Pillar Collateral]." *In re Murray Energy Holdings Co.*, 654 B.R. 110, 122, 135 (Bankr. S.D. Ohio 2023) ("*Murray II*").

Drivetrain then filed a motion for reconsideration of *Murray II* (“Reconsideration Motion”) (Doc. 3182), in which it asserted the Collateral-Valuation Argument for the first time.

#### IV. Legal Analysis

##### A. The Law Governing Reconsideration Motions

Motions for reconsideration “[are] not recognized under the Federal Rules of Civil Procedure.” *Hogan v. Diccico (In re Hogan)*, 79 Fed. Appx. 846, 848 (6th Cir. 2003). But they have consistently been treated as motions to alter or amend a judgment under Rule 59(e). *See Raveling v. HarperCollins Publishers Inc.*, No. 04-2963, 2005 WL 900232, at \*7 (7th Cir. Mar. 4, 2005). Rule 59(e) is made applicable here by Rule 9023 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rule(s”). “A court may grant a motion to alter or amend a judgment under Fed. R. Civ. P. 59(e) where there is “(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.” *Intera Corp. v. Henderson*, 428 F.3d 605, 620 (6th Cir. 2005). Drivetrain contends that the Court committed a clear error of law in *Murray II* and the decision results in manifest injustice. Mem. in Supp. of Recons. Mot., Doc. 3182-1 at 5. Drivetrain is wrong on both counts.

##### B. The Collateral-Valuation Argument Was Waived.

The Debtors’ Objection was an “omnibus claim objection”—an objection to the claims of multiple creditors. Bankruptcy Rule 3007(d) enumerates the grounds on which omnibus claim objections may be based. Reclassifying a secured proof of claim as unsecured is not one of the enumerated grounds.<sup>3</sup> But the Debtors sought and obtained an order approving omnibus claim

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<sup>3</sup> In this context, reclassification means disallowing the claim as a secured claim and instead allowing it as an unsecured claim. The Debtors’ disclosure statement for their joint plan of reorganization estimates that general unsecured claims will receive a distribution of between 0%–1%. *See* Suppl. Disclosure Statement for Debtors’ Second Am. Plan, Doc. 1934-1 at 12. But if Pillar’s claims remain classified as secured claims, they will be paid in full. Plan at 29, 30.

objection procedures, Doc. 1457, Ex. 1 (“Omnibus Claim Objection Procedures”), that expanded the grounds on which omnibus claim objections could be based. Those additional grounds include, among others, the reclassification of claims:

Grounds for Omnibus Objections. In addition to those grounds expressly set forth in Bankruptcy Rule 3007(d), the Debtors may file omnibus objections (each, an “Omnibus Objection”) to Claims on the grounds that such Claims, in part or in whole:

- a. are inconsistent with the Debtors’ books and records;
- b. fail to specify the asserted Claim amount (or only list the Claim amount as “unliquidated”);
- c. fail to sufficiently specify the basis for the Claim or provide sufficient supporting documentation in support of such Claim;
- d. seek recovery of amounts for which the Debtors are not liable;
- e. are to be satisfied by payment in full on account of such Claim from a party that is not a Debtor;
- f. have been satisfied by a party other than the Debtors (including one or more of the Debtors’ insurers);
- g. *are incorrectly or improperly classified;*
- h. have been formally withdrawn by the claimant through the filing of a pleading or through the entry of a Court order indicating withdrawal of the Claim;
- i. are filed against non-Debtors or are filed against multiple Debtors, except to the extent permitted by the Bar Date Order; or
- j. are disallowed pursuant to [11 U.S.C. § 502].

Omnibus Claim Obj. Procedures at 1–2 (emphasis added).

The Debtors could base an objection on any of the grounds listed above, in addition to the grounds set forth in Bankruptcy Rule 3007(d). But the Omnibus Claim Objection Procedures

further provided that future objections are only preserved if they are based on a ground “not previously raised in an objection.”

NOTHING IN ANY OMNIBUS OBJECTION OR OBJECTION NOTICE IS OR SHALL BE DEEMED TO CONSTITUTE A WAIVER OF ANY RIGHTS OF THE DEBTORS OR ANY OTHER PARTY IN INTEREST IN THESE CASES TO DISPUTE ANY CLAIMS, ASSERT COUNTERCLAIMS, RIGHTS OF OFFSET OR RECOUPMENT, DEFENSES, OBJECT TO CLAIMS (OR OTHER CLAIMS OR CAUSES OF ACTION OF A CLAIMANT) *ON ANY GROUNDS NOT PREVIOUSLY RAISED IN AN OBJECTION*, UNLESS THE COURT HAS ALLOWED A CLAIM OR ORDERED OTHERWISE, OR SEEK TO ESTIMATE ANY CLAIM AT A LATER DATE. AFFECTED PARTIES WILL BE PROVIDED APPROPRIATE NOTICE THEREOF AT SUCH TIME.

*Id.* at 11 (emphasis added).

A *ground* must be distinguished from an *argument* for that ground. A ground is a “sufficient legal basis for granting the relief sought,” and “identical grounds may often be supported by different legal arguments[.]” *Sanders v. United States*, 373 U.S. 1, 16 (1963); *see also Campbell v. Blodgett*, 997 F.2d 512, 516 (9th Cir. 1992) (“[A] different factual basis or argument asserted to support the same legal theory advanced previously does not constitute a new ground for relief . . . .”); *Jakupak v. Grant*, 762 F.2d 1008 (6th Cir. 1985) (“The addition of a new fact or legal argument . . . does not transform the claim into a new ‘ground.’”); *Williams v. United States*, 731 F.2d 138, 141 (2d Cir. 1984) (holding that a claim being based on a different factual premise is not sufficient to make the claim based on a new ground). Thus, under the Omnibus Claim Objection Procedures (which the Debtors proposed and the Court approved), a ground previously raised in an omnibus objection cannot be raised again with a different argument in support of that ground.

The Debtors’ Objection sought to reclassify the Pillar Claims as unsecured. That is, the *ground* for the Objection was that the Pillar Claims had been *incorrectly or improperly classified*.

And in support of this ground for the Objection, the Debtors made several different *arguments*: (1) the Superpriority Liens had priority over the West Virginia Liens; (2) “the collateral value was insufficient to cover the Superpriority Term Loans . . . in full;” and, (3) “[b]ecause there is no value cushion remaining to attribute to the [Pillar Claims], [they] at best, are allowable only as general unsecured claims.” Obj. at 6. Put another way, the Debtors argued that the Superpriority Liens had priority over the West Virginia Liens and that the amount of the claims under the Superpriority Term Loans was so great that the value of the collateral securing the Superpriority Liens—substantially all the assets of the Debtors—was insufficient to secure Pillar’s Pillar Claims (or the claims of the other mechanic’s lienholders).

The Debtors made no other *argument* to support the *ground* that the Pillar Claims had been incorrectly or improperly classified. In particular, the Debtors *could have* made the Collateral-Valuation Argument—that if the West Virginia Liens had priority over the Superpriority Liens, then the Pillar Collateral (the assets of West Virginia Debtors securing the Pillar Claims) had to be valued to determine whether the Pillar Claims were secured. But the Debtors never made that argument in the Objection.

Nor did Drivetrain, until it filed its Reconsideration Motion. In its motion for summary judgment, Drivetrain reiterated the same *ground* the Debtors set forth in the Objection—the Pillar Claims were improperly classified. And Drivetrain reiterated the same *argument* the Debtors made in support of that ground—that the Pillar Claims were unsecured because the Superpriority Liens had priority over the West Virginia Liens. Drivetrain did not make the Collateral-Valuation Argument in its summary judgment motion. During a status conference (“Status Conference”) on the Reconsideration Motion, counsel for Drivetrain explained that it “didn’t make [the Collateral-Valuation] argument at summary judgment [because] the valuation issue is ripe with factual issues,

genuine issues of fact, that did not lend itself easily to a summary judgment motion.” Tr. of 12-7-23 Status Conference, Doc. 3258 at 11. This does not, however, excuse the Debtors’ omission of that argument from the Objection.

As already discussed, in *Murray II* the Court granted Pillar summary judgment on the Pillar Claims, holding that they “may not be reclassified as general, unsecured claims[.]” *Murray II*, 654 B.R. at 135. In its Reconsideration Motion, Drivetrain argues it may again object to the classification of the Pillar Claims on the ground that they are not secured or not fully secured (*i.e.*, on the ground previously raised in the Objection). But this time, it supports that very same ground for objection with a new, alternative argument—that if the West Virginia Liens have priority over the Superpriority Liens, then the value of the Pillar Collateral is insufficient to fully secure the Pillar Claims. That is, Drivetrain made the Collateral-Valuation Argument for the first time in the Reconsideration Motion.

According to Drivetrain, the Debtors “reserved the right to raise any additional objections to the claims.” Mem. in Supp. of Recons. Mot. at 10. In the Objection, the Debtors stated:

This objection is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of the Debtors or any other party in interest to object to any of the Claims . . . on any grounds whatsoever, and the Debtors expressly reserve all further substantive or procedural objections they may have.

Obj. at 9. But the Debtors’ purported reservation is inconsistent with the Omnibus Claim Objection Procedures, which only allowed the Debtors to preserve their right to object to claims on “grounds not previously raised in an objection.” Omnibus Claim Obj. Procedures at 11.

In the Objection, Drivetrain objected to the secured status of the Pillar Claims on the ground that they were improperly classified as secured claims. It supported that ground by arguing that the Pillar Claims were not secured because the credit bid for the Debtors’ assets was insufficient to fully satisfy the funded debt claims held by the Superpriority Term Loan lenders. Now,

Drivetrain again objects to the secured status of the Pillar Claims on the ground that they were improperly classified as secured claims—that is, on a ground previously raised in an objection. This time, it supports that ground with a new argument—the Collateral-Valuation Argument described above. But a new argument is not enough. Objections could only be preserved if they were based on “grounds not previously raised in an objection.” Omnibus Claim Obj. Procedures at 11. Because Drivetrain merely makes a new argument to support a ground previously raised, its right to object to the Pillar Claims based on collateral valuation was not preserved.

In its reply in support of the Reconsideration Motion (“Reconsideration Reply”) (Doc. 3248), Drivetrain asserts that in the Objection, the Debtors argued that “the value of the collateral subject to Pillar’s liens was insufficient to fully secure its claims.” Recons. Reply at 2. But the Debtors actually argued that “the collateral value is insufficient to cover the Superpriority Term Loan and the DIP Facility in full,” and “[b]ecause there is no value cushion remaining to attribute to the Mechanic’s Lien Claims, such Claims, at best, are allowable only as general unsecured claims.” Obj. at 6. The Debtors never argued that, if the West Virginia Liens had priority over the Superpriority Liens, then the Pillar Collateral had to be valued before its claims could be classified as fully secured. That is, the Debtors never made the Collateral-Valuation Argument Drivetrain now seeks to assert.

To be preserved, the Collateral-Valuation Argument needed to be made in the Objection. But it was not. And it was too late to raise that argument in the Reconsideration Motion. In fact, because the Collateral-Valuation Argument was first raised in the Reconsideration Motion, it was waived. *See Wiley v. United States*, 20 F.3d 222, 226 (6th Cir. 1994) (holding that objections first raised in a reconsideration motion are waived); *Nagano v. Ledbetter*, No. 89-15002, 1990 WL 107867, at \*2 (9th Cir. July 27, 1990) (holding that district court did not abuse its discretion when

it refused to consider an argument first raised in a reconsideration motion); *Salveson v. JP Morgan Chase & Co.*, 166 F. Supp. 3d 242, 265 (E.D.N.Y.), *aff'd*, 663 F. App'x 71 (2d Cir. 2016) (“Arguments raised for the first time in [a] motion for reconsideration are not properly presented to the district court and, absent a reason to excuse the untimeliness, are waived by the party.”) (cleaned up); *Moberg v. City of W. Chicago*, No. 00 C 2504, 2002 WL 31834872, at \*2 (N.D. Ill. Dec. 17, 2002) (“Because Defendants have raised these arguments for the first time in their motion for reconsideration, they have waived these arguments and their motion is denied.”); *In re City of Detroit, Michigan*, 655 B.R. 134, 137 (Bankr. E.D. Mich. 2023) (same). A court should decline to apply this rule only when necessary “to avoid a gross miscarriage of justice.” *Wiley*, 20 F.3d at 226. As explained below, there is no gross miscarriage of justice here.

Drivetrain argues that not being permitted to belatedly raise its Collateral-Valuation Argument will create a gross miscarriage of justice because “the Court incorrectly assumed the [Pillar] Collateral’s value was equal to or greater than the asserted amount of the [Pillar Claims], where section 506(a) of the Bankruptcy Code and controlling Sixth Circuit precedent require a factual determination regarding the value of the [Pillar] Collateral.” Recons. Reply at 2. But the Court assumed nothing of the sort. Until Drivetrain raised the Collateral Valuation Argument in its Reconsideration Motion, neither the Debtors nor Drivetrain had ever suggested that the Pillar Collateral’s value was less than the amount of the Pillar Claims. It was the failure of the Debtors and Drivetrain to preserve the objection on that basis—not an improper assumption by the Court as to the Pillar Collateral’s value—that led to the decision in *Murray II*.

Drivetrain also argues that *Murray II* “could result in Pillar recovering more than 100% of the amount that its secured claim would be allowed at . . . .” Recons. Reply at 4. If that highly improbable scenario occurred (see discussion immediately below), it would not be due to the ruling

in *Murray II*, but rather the Debtors’ failure to timely make the Collateral-Valuation Argument. When Drivetrain’s counsel raised this point at the Status Conference, the Court asked how Drivetrain could make the Collateral-Valuation Argument in good faith given the values attributed to the West Virginia Debtors’ assets in their schedules of assets and liabilities (“Schedules”), which were filed under oath. Tr. of 12-7-23 Status Conference, Doc. 3258 at 10. The aggregate amount of the Pillar Claims is \$318,498.81, while the West Virginia Debtors valued the property reported on their Schedules at more than \$1 billion. In each instance, the value of the real property owned by the West Virginia Debtors far exceeds the amount of the applicable secured claim Pillar asserts:

<b>Proof of Claim Number</b>	<b>Asserted Amount of Pillar’s Secured Claim</b>	<b>Collateral Securing Claim</b>	<b>Scheduled Value of Applicable Debtor’s Real Estate</b>
1106	\$73,518.35	The Harrison County Coal Company’s interest in and to those certain mining complexes, warehouses, facilities, buildings, structures, mines, and improvements located upon the property commonly referred to as Harrison County Mine in Harrison County, West Virginia.	\$159,440,357.76.  <i>See</i> Schedule A/B, Part 9, Doc. 599 at 25 (real estate located at Harrison County Mine)
1107	\$124,617.15	The Marshall County Coal Company’s interest in and to those certain mining complexes, warehouses, facilities, buildings, structures, mines, and improvements located upon the property commonly referred to as Marshall County Mine situated in Marshall County, West Virginia.	\$296,780,838.83.  <i>See</i> Schedule A/B, Part 9, Doc. 605 at 25 (real estate located at Marshall County Mine)
1114	\$52,645.74	The Ohio County Coal Company’s interest in and to those certain mining complexes, warehouses, facilities, buildings, structures, mines, and improvements located upon the property commonly referred to as Ohio County Mine situated in Marshall County, West Virginia.	\$54,566,350.95.  <i>See</i> Schedule A/B, Part 9, Doc. 615 at 25 (real estate located at Ohio County Mine)

Proof of Claim Number	Asserted Amount of Pillar's Secured Claim	Collateral Securing Claim	Scheduled Value of Applicable Debtor's Real Estate
1117	\$15,955.50	The Monongalia County Coal Company's interest in and to those certain mining complexes, warehouses, facilities, buildings, structures, mines, and improvements located upon the property commonly referred to as Monongalia County Mine situated in Monongalia County, West Virginia.	\$293,306,487.57. <i>See</i> Schedule A/B, Part 9, Doc. 609 at 25 (real estate located at Monongalia County Mine)
1123	\$51,762.07	The Marion County Coal Company's interest in and to those certain mining complexes, warehouses, facilities, buildings, structures, mines, and improvements located upon the property commonly referred to as Marion County Mine situated in Marion County, West Virginia.	\$212,567,345.19. <i>See</i> Schedule A/B, Part 9, Doc. 601 at 25 (real estate located at Marion County Mine)
<b>Total Secured Claims:</b>	<b>\$318,498.81</b>	<b>Total Scheduled Value:</b>	<b>\$1,016,661,380.30</b>

When the Court questioned counsel about how Drivetrain could make a good faith argument that the Pillar Claims were less than fully secured, given that the value ascribed to the West Virginia Debtors' mining properties in their Schedules was many times greater than the amount of the Pillar Claims, he responded:

ACNR's CFO was deposed by the mechanics on this issue of the schedules and the properties. And what the schedules indicate is they indicate the assets that are associated with specific properties, with specific mines. The schedules do not show which of those assets are actually tethered to specific entities. And that was the testimony in that deposition—

....

Testimony was that those were assigned values, but with respect to specific mines, with specific properties, but not necessarily those operating cos., those operating cos. may not necessarily have title, may not have ownership of those specific assets listed.

Tr. of 12-7-23 Status Conference, Doc. 3258 at 9–10.

But this statement by Drivetrain’s counsel is inconsistent with the Stalking Horse Purchase Agreement under which ACNR acquired substantially all of the Debtors’ assets. In seeking approval of the purchase agreement, the Debtors filed a 143-page document describing the real property owned by the West Virginia Debtors that would be sold to ACNR. *See* Stalking Horse APA Schedules (Doc. 1146), Annex 2 (Schedule of Owned Real Property). In that document, the Debtors listed (in great detail) each surface tract of real estate owned by the West Virginia Debtors, broken down by entity. In all, the West Virginia Debtors owned more than 500 separate surface parcels of land (not including mineral interests) totaling more than 4,500 acres. *Id.* This should dispel any question as to whether the West Virginia Liens attached to properties owned by the “operating companies” referred to by Drivetrain’s counsel, namely the West Virginia Debtors.

A more salient point that Drivetrain’s counsel might have made is that Pillar’s mechanic’s liens did not attach to the real estate owned by the West Virginia Debtors in the aggregate. Under the applicable West Virginia mechanic’s lien statutes, a contractor who “erects, builds, constructs, alters, removes or repairs any building or other structure, or other improvement appurtenant to any such building or other structure, or who alters or improves the real property whereon the same stands” has a lien on “such building or other structure or improvement appurtenant thereto, and upon the interest of the owner thereon the real property whereon the same stands.” W. Va. Code § 38-2-1. Likewise, a supplier who furnishes a property owner “for use in the erection, construction, alteration, repair or removal of any building or other structure or improvement appurtenant thereto, any materials, machinery or other equipment or supplies necessary to the completion of such building or other structure,” obtains a lien “for his compensation as is mentioned in section one of this article.” W. Va. Code § 38-2-3. That is, a materials supplier has

a lien on “such building or other structure or improvement appurtenant thereto, and upon the interest of the owner thereof in the real property whereon the same stands.” *Id.*; W. Va. Code § 38-2-1. Thus, Pillar’s mechanic’s liens would attach only to those properties for which it provided construction or repair services or supplied materials used in the construction, alteration or repair of any building, structure or improvement.

Even this more salient point would have fallen flat. The parties stipulated that Pillar had liens (mechanic’s and/or materialman’s) on the Harrison County, Marshall County, Ohio County, Monongalia County and Marion County Mines and the liens on those mine properties “comprise[d] the entire security” for Pillar’s Claim Numbers 1106, 1107, 1114, 1117 and 1123, respectively. Joint Stipulation, Doc. 2850 at 6–7. So there is no question that the Pillar Collateral consists of liens on some or all of the properties that comprised the Harrison County, Marshall County, Ohio County, Monongalia County and Marion County Mines.

Further, an in-depth review of Pillar’s proofs of claim reveals that, with one possible exception (discussed below), Pillar provided construction and repair services for, or supplied materials to, each of the West Virginia Debtors. And the proofs of claim further show that Pillar provided those services and materials at each mine, and often at multiple locations (mine portals) at each mine, owned by those entities. Under W. Va. Code §§ 38-2-1 and 38-1-3, Pillar’s liens thus attached to each of the properties on which those mines are situated. That is no doubt why the parties so stipulated, agreeing that Pillar had liens on the mines owned by each of the West Virginia Debtors and the liens on those mine properties “comprise[d] the entire security” for each of the Pillar Claims (Claim Nos. 1106, 1107, 1114, 1117 and 1123). Joint Stipulation, Doc. 2850 at 6–7. Given the number of mines to which Pillar’s mechanic’s liens attached, the Court cannot

fathom how Drivetrain could tenably maintain that the value of each of these mining properties is less than the amounts of the Pillar Secured Claims listed below:

- The Harrison County Coal Company – \$73,518.35;
- The Marshall County Coal Company – \$124,617.15;
- The Ohio County Coal Company – \$52,645.74;
- The Monongalia Coal Company – \$15,955.50; and
- The Marion County Coal Company – \$51,762.07.

As discussed above, Drivetrain argues that the Court’s ruling in *Murray II* will result in manifest injustice by relieving Pillar of its burden to offer evidence to establish its secured status, as § 506(a) of the Bankruptcy Code requires. That is, given the Court’s determination that Drivetrain waived the Collateral Valuation Argument, Pillar will not have to prove the value of the Pillar Collateral—either in the aggregate or on an entity-by-entity basis—exceeds the amount of the Pillar Claims. And, in Drivetrain’s telling, “[this] could result in Pillar recovering more than 100% of the amount that its secured claim would be allowed at . . . .” Recons. Reply at 4. But this argument borders on frivolous, as there is no doubt that an evidentiary hearing would result in a finding that the Pillar Claims are fully secured—if not grossly oversecured. After all, the West Virginia Debtors operated more than half the mines the Debtors sold to ACNR under their Plan. And the mines operated by the West Virginia Debtors accounted for 81% of the \$2.011 billion in revenue and 91% of the \$480 million in EBITDA from coal sales in 2018 (the year before the Debtors commenced their Chapter 11 cases). Declaration of Robert D. Moore, President, Chief Executive Officer, and Chief Financial Officer, of Murray Energy Holdings Co., in Support of Chapter 11 Petitions (“Moore Declaration”), Doc. 10 at 12–13. Indeed, the West Virginia Debtors owned more than two-thirds of the mines that were sold to ACNR in the \$1.2 billion asset sale effectuated through the Plan. Between the West Virginia Debtors’ Schedules and the demonstrated economic value of their properties, the notion that the Court would (after an evidentiary hearing)

value the mining properties comprising the Pillar Collateral at an amount lower than the face amount of the Pillar Claims—either in the aggregate or on an entity-by-entity basis—is absurd.

That Drivetrain would even make this argument raises several questions. Is Drivetrain’s eleventh-hour assertion of the Collateral-Valuation Argument based on a sincerely held belief that the Pillar Collateral is worth less than the face amount of Pillar’s secured claims? Or is Drivetrain’s Collateral Valuation Argument just the latest litigation tactic in an ongoing campaign of attrition waged against the mechanic’s lien claimants? See *Kramer v. Hammond*, 943 F.2d 176, 179 (2d Cir. 1991) (noting that the defendant “engaged in extensive pretrial litigation, apparently designed to wear down his opponent,” including filing several dispositive pretrial motions and appealing the denial of one to a higher court). See also *Da Silva Moore v. Publicis Groupe SA & MSL Grp.*, No. 11CIV1279ALCAJP, 2012 WL 12528637 (S.D.N.Y. Nov. 8, 2012) (observing that “[c]ourts often use the phrase ‘scorched earth’ to describe hardball litigation tactics designed to complicate and prolong litigation and drive up litigation costs”).

The Debtors kicked off their campaign against Pillar and the other mechanic’s lien holders with a “document dump”—filing thousands of pages of documents, including “copies of old land records that are in some cases illegible, along with invoices, shipping notices, purchase orders and the like, attached with no explanation of their relevance nor any apparent organizational scheme.” *Murray II*, 654 B.R. at 116 & n.4. But despite the Court’s “in-depth, exhaustive review of hundreds of pages of exhibits,” those documents failed to support Drivetrain’s contention that the properties encumbered by Pillar’s Kentucky mechanic’s lien were subject to first-in-time Superpriority Liens. *Id.* at 134.

When it became apparent that the West Virginia Liens (and certain mechanic's liens asserted by other mechanic's lienholders in West Virginia and elsewhere) had priority over the Superpriority Liens, Drivetrain resorted to its novel—and wholly unsupported—bundle of sticks argument. *See Murray I*, 638 B.R. at 594–96 (describing Drivetrain's bundle of sticks argument as “misconceived,” “analytical[ly] flaw[ed],” and “unconvincing,” and noting that “Drivetrain relie[d] on a litany of cases in support of its bundle of sticks argument, but none is on point”). Now, in the latest phase of its campaign, Drivetrain belatedly asserts the Collateral Valuation Argument, maintaining that Pillar must come forward with appraisal testimony to establish what it undoubtedly knows full well: The value of the multiple parcels of real property encumbered by Pillar's West Virginia Liens at each of the mines owned by the West Virginia Debtors (*i.e.*, the Pillar Collateral) exceeds the value of the Pillar Claims—probably by several orders of magnitude. *See Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 597 (8th Cir. 2001) (holding that the district court acted within its discretion when it imposed sanctions for “vexatiously increasing the costs of litigation by filing a frivolous motion for reconsideration”); *Bd. of Regents for Okla. Agric. & Mech. Colleges for & on behalf of Okla. Panhandle State Univ. v. Johnson Controls, Inc.*, No. CIV-23-1025-D, 2024 WL 400188, at \*2 n.2 (W.D. Okla. Feb. 2, 2024) (criticizing a litigation practice that would “force [an] entity to prove an obvious truth, which would no doubt take up the court's and the parties' valuable time and resources”); *Jones v. Gale*, 405 F. Supp. 2d 1066, 1082 (D. Neb. 2005), *aff'd*, 470 F.3d 1261 (8th Cir. 2006) (holding that “the party challenging [a statute] should not be required to bear the burden of an evidentiary hearing to prove the obvious.”).

For the Collateral-Valuation Argument to be preserved, it needed to be set forth in the Objection. Because it was not, the Collateral-Valuation Argument was waived. And for the

reasons stated above, denial of the Reconsideration Motion will not result in a manifest injustice. Thus, the Reconsideration Motion is denied as to Claims 1106, 1107, 1114 and 1123.

As for Claim 1117, the Court noted in its review of the documents attached to the claim that Pillar appears to have supplied materials (and/or providing contracting services) to The Monongalia Coal Company at both West Virginia (Wana, WV) and Pennsylvania (Kuhntown Warehouse, Brave, PA) addresses. The Moore Declaration states that the Monongalia Coal Company mine is located in West Virginia. Moore Decl. at 13. And it may well be that Pillar shipped materials to a Monongalia Coal Company warehouse located in Pennsylvania, and that those materials were used at the West Virginia mining property.<sup>4</sup> But because (1) this is unclear from the face of the proof of claim, and (2) Pillar would be entitled to assert a West Virginia mechanics lien only for contracting services rendered or materials supplied relating to a “building or other structure or improvement appurtenant thereto, and upon the interest of the owner thereof in the real property whereon the same stands” located in West Virginia, *see* W. Va. Code §§ 38-2-1, 38-2-3, the Court will hold a status conference to determine whether there is any dispute between the parties as to this issue.

**C. Judicial Estoppel Also Bars the Assertion of the Collateral-Valuation Argument.**

The foregoing provides reason enough to deny the Reconsideration Motion. But the doctrine of judicial estoppel also bars Drivetrain from asserting the Collateral-Valuation Argument. As to this point, context matters. At the hearing on confirmation of the Plan (“Confirmation Hearing”), several mechanic’s lien claimants objected to their treatment under the

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<sup>4</sup> As already stated, the parties stipulated that Pillar’s claim is secured by a lien on the Monongalia Coal Company mine. Joint Stipulation, Doc. 2850 at 7 (“The lien on the Monongalia County Mine in Monongalia County, West Virginia comprises the entire security for Pillar’s Claim No. 1117.”).

Plan. The Court recounted their objections during the Status Conference on the Reconsideration Motion:

[W]hen we had objections from all these mechanic’s lien claimants at the confirmation hearing, it became very clear that the stalking horse bidder did not have the cash to reserve to provide for the treatment that the plan accorded allowed secured, “[O]ther [S]ecured Claims[,]” which was cash in full. [The Plan] deprived them of their right to vote by classifying them as unimpaired. They litigated that issue at the confirmation hearing, saying, we are, in fact, impaired because the [P]lan is not reserving sufficient cash to pay our claims in full if these claims are allowed.

Tr. of 12-7-23 Status Conference, Doc. 3258 at 14.

In response to the mechanics lien claimants’ objections, counsel for the Debtors argued during the Confirmation Hearing that

the plan treatment is such that if [the mechanic’s lienholders] are able to prove a claim in Class 2, *it can be rendered unimpaired, either through payment in full in cash or continuing a lien on the collateral.* And we’ve added this extensive belt-and-suspenders language in the confirmation order, which basically provides that the liens will continue to attach and remain, ride through, effectively completely unimpaired.

H’rg Tr., Doc. 2320 at 6 (emphasis added).

The Debtors’ counsel reiterated this point in a letter brief filed before confirmation of the Plan. *See* Letter Brief, Doc. 2134 at 6 (“If a holder of a mechanic’s lien proves it has a valid, first priority lien, its claim against the Debtors will be treated under the Plan as a Class 2 Other Secured Claim and is entitled to either full payment in cash or unimpaired treatment (*i.e.*, reinstatement) at the Debtors’ election.”). Pillar proved it has valid, first priority liens. It demonstrated that it took the steps necessary to perfect its mechanic’s liens under West Virginia. And Pillar’s first priority status was established when the Court rejected Drivetrain’s bundle of sticks argument. So,

consistent with the statements of the Debtors' counsel, Pillar is entitled to full payment in cash or continued liens on the Pillar Collateral and the right to foreclose those liens.<sup>5</sup>

The Court—and, it suspects, the mechanic's lien claimants as well—left the Confirmation Hearing with the distinct impression that the Debtors had no objection to the secured status of the

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<sup>5</sup> The Court acknowledges that the letter from Debtors' counsel also said:

[A] mechanic's lien holder has an *in rem* right against the Debtors' assets by virtue of its mechanic's lien and an *in personam* claim against the Debtors that is limited to the value of the collateral that secures such mechanic's lien. It is black letter law that a secured claim is only secured to the extent of the value of the collateral. Therefore, no mechanic's lien holder has a 'guaranteed' right to payment in full of its claim in cash from the Debtors today; their right to payment is limited to the value of the collateral securing the mechanic's lien and the ability to liquidate the underlying collateral. The Plan does not alter those rights.

Doc. 2134 at 8. But this is nothing more than an elemental description of the operation of § 506(a) of the Bankruptcy Code, which provides:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim.

11 U.S.C. § 506(a).

The purpose of the letter from Debtors' counsel was to persuade the Court that the mechanic's lienholders claims were unimpaired given the "toggle feature" of the Plan. That Plan provision called for the lienholders to receive either full payment of their claims or to have the right to foreclose their liens against the properties transferred to ACNR through the asset sale. Until Drivetrain filed the Reconsideration Motion, there has been no challenge, either in Debtors' counsel's letter or in any other filing with this Court, to the mechanic's lienholders' fully secured status—other than the argument made in the Objection based on lien priority. *See* Objection at 6 (asserting that the mechanic's lienholders' claims should be reclassified as unsecured because (1) the Superpriority Liens had priority over the mechanic's liensholders;' claims, (2) "the collateral value was insufficient to cover the Superpriority Term Loans . . . in full," and (3) "there is no value cushion remaining to attribute to the [Pillar Claims], [they] at best, are allowable only as general unsecured claims[)"). In short, the letter from Debtors' counsel does nothing to alter the Court's conclusion that Drivetrain is judicially estopped from raising the Collateral Valuation Argument.

mechanic's lien claims based on valuation or any reason, other than the argument that the mechanic's liens were junior in priority to the Superpriority Liens. And in confirming the Plan, the Court relied on the Debtors' representation that the mechanic's lien claims were being rendered unimpaired, either through full payment in cash or a continued lien on the collateral. The Court accepted the Debtors' position at face-value, stating in its ruling at the Confirmation Hearing:

[I]f the mechanic's lienholders, again, can establish that they're properly perfected and they can establish that they do indeed hold first and best liens on the properties in question, then if they proceed to foreclose those liens, then Murray NewCo will have a choice to make. *It will either have to satisfy those liens in cash or allow the properties to be foreclosed upon. And if they opt for the former solution, then the mechanic's lienholders will be in a much better economic position because they'll have a solvent, economically viable entity to look to for the payment of cash.*

....

So, for all those reasons, the Court finds that the mechanic's lienholders' arguments based upon impairment, a violation of 1129(a)(1) of the Code, are not well taken, and will be overruled.

H'rg Tr., Doc. 2322 at 21 (emphasis added).

The position Drivetrain takes now—that Pillar might not be entitled to full payment in cash even if it shows that it has properly perfected first priority liens on the Pillar Collateral—conflicts with the Debtors' earlier position on which the Court based its decision to confirm the Plan. It also conflicts with the bargain Pillar and other mechanic's lien claimants struck with the Debtors—they agreed to have their claims designated as unimpaired, thus giving up their right to vote on the Plan, in exchange for a promise of full cash payment or foreclosure on their valid, first priority liens. Drivetrain is therefore judicially estopped from taking this position. *See New Hampshire v. Maine*, 532 U.S. 742, 751 (2001) (stating that judicial estoppel “forbids use of intentional self-contradiction . . . as a means of obtaining unfair advantage”) (cleaned up). Under Sixth Circuit law, “judicial estoppel bars a party from (1) asserting a position that is contrary to one that the

party has asserted under oath in a prior proceeding, where (2) the prior court adopted the contrary position either as a preliminary matter or as part of a final disposition.” *Audio Technica U.S., Inc. v. United States*, 963 F.3d 569, 575 (6th Cir. 2020). The “under oath requirement is met when a party previously asserted an inconsistent position in a written filing and argued the motion on the merits before the court.” *Shufeldt v. Baker, Donelson, Bearman, Caldwell & Berkowitz, PC*, 855 F. App’x 239, 245 (6th Cir. 2021) (cleaned up).

Arguing that judicial estoppel has no application here, Drivetrain relies on the following statement the Court made during the Confirmation Hearing:

[G]oing forward, the [mechanic’s lien claimants will] retain their in rem rights, and should they decide to exercise those in rem rights, they will be dealing with a well-funded successor entity, Murray NewCo, so if they proceed to foreclose on the mechanic’s liens and it’s determined that they have a first and best lien on those properties, then Murray NewCo will have a decision to make. And if [Murray Newco] decide[s] not to cash them out, then they can exercise their rights in rem, and at that point if [foreclosure is] insufficient to satisfy the mechanic’s lien[s], then we’re not really talking about a secured claim at that point in time. We’re talking about an unsecured claim.

Hr’g Tr., Doc. 2321 at 22. Drivetrain emphasizes the Court’s statement that “if [foreclosure is] insufficient to satisfy the mechanic’s lien[s], then we’re not really talking about a secured claim at that point in time. We’re talking about an unsecured claim.” Recons. Reply at 4. From this, Drivetrain concludes that the Court “acknowledged that the mechanic’s lien claims were only secured up to the value of the underlying collateral.” *Id.* But the Court’s statement was merely a recitation of what indisputably would have been the case in the event of foreclosure. That statement was not intended to suggest that the claims of Pillar or the other mechanic’s lienholders would be anything other than fully secured in the event of a cash out, especially given the Debtors’ waiver of the Collateral-Valuation Argument. That is, Drivetrain ignores the fact that the Court referred to two alternatives that Murray NewCo, the buyer of substantially all the assets of the

Debtors, would have had—cashing out the mechanic’s lienholders and foreclosure. It was only in the context of foreclosure that the Court raised the possibility that a portion of the mechanic’s lien claims might be unsecured. But that would be true of any claim secured by collateral; such a claim is, by definition, only secured up to the value of that collateral and unsecured as to any deficiency. In the context of the cash out, the Court did not mention or contemplate the possibility of the claims being unsecured. This is because statements made by Debtors’ counsel at the Confirmation Hearing led the Court—and undoubtedly the mechanic’s lienholders as well—to believe a valuation hearing as to specific collateral securing the mechanic’s liens would not be necessary in the event of a cash out.

#### **V. Conclusion**

Because the Collateral-Valuation Argument was not made in the Objection but instead was made for the first time in the Reconsideration Motion, and because judicial estoppel bars the assertion of the Collateral-Valuation Argument, the Reconsideration Motion is **DENIED** except as to Claim 1117. Regarding that claim, the Court will hold a status conference on March 19, 2024 at 10 a.m. in Courtroom A, United States Bankruptcy Court, 170 N. High Street, Columbus, OH 43215.

**IT IS SO ORDERED.**

Copies to:

Default List

Douglas Feichtner, Attorney for Plan Administrator  
Michael Galasso, Attorney for Pillar Innovations, LLC