Docket #0120 Date Filed: 3/26/2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
TE HOLDCORP, LLC,	Case No. 20-11442 (BLS)
Debtor.[1]	**Hearing Date: April 14, 2021 at 1:30 p.m. (ET)**
	Ref. Docket Nos. 102, 111, 115

PRESIDIO PETROLEUM LLC'S OBJECTION TO SPITFIRE ENERGY GROUP LLC'S MOTION TO RECONSIDER AND AMEND ORDER WITH BRIEF IN SUPPORT

Presidio Petroleum LLC (together with its affiliates, "Presidio"), hereby submits this objection (this "Objection") to the motion [D.I. 115] (the "Motion") for reconsideration of the *Order Enforcing (A) the Sale Order and the Confirmation Order* [D.I. 111] (the "Order") and related February 12, 2021 hearing ruling [D.I. 102] (the "Bench Ruling") filed by Spitfire Energy Group LLC ("Spitfire").[2] In further support of its Objection, Presidio respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Motion is Spitfire's most recent salvo in litigation it launched against Presidio in the wake of the consummation of the sale of substantially all of the Debtors' assets to Presidio pursuant to 11 U.S.C. § 363(f), free and clear of liens, claims, encumbrances, and interests – including interests and claims that Spitfire is seeking to collect from Presidio in litigation in Texas

[1] The last four digits of the Debtor's federal tax identification number are 6730, and the Debtor's mailing address is PO Box 720720, Oklahoma City, Oklahoma 73172. The chapter 11 cases of the following affiliates of the Debtor were closed effective as of July 31, 2020: Templar Energy LLC (4719), TE Holdings, LLC (3115), TE Holdings II, LLC (N/A), Templar Operating LLC (0810), Templar Midstream LLC (3275), and TE Holdings Management LLC (7467) (the "Reorganized Debtors" and collectively, with the Debtor, the "Debtors"). *See* Chapter 11 Case No. 20-11441, D.I. 232.

[2] Capitalized terms used but not defined in this Objection shall have the meanings given to them in the Motion or Order, as applicable.

that on its face violates the Sale Order and Confirmation Order.[3] Similar to Spitfire's other efforts, the Motion is long on accusations against Presidio and lacking in any basis in law or fact. Essentially, Spitfire asserts that an opt-out of a third-party plan release somehow preserved any claim it might be able to assert against Presidio as a successor to the Debtors under the rejected MSC and for interests that were sold free and clear under the Sale Order. In other words, Spitfire attempts to introduce parole evidence through a motion to reconsider, in order to render the Sale Order's free and clear language without meaning. Spitfire claims that an unrelated opt-out of third-party plan releases somehow reflects that *Presidio itself intended that the sale actually not be free and clear*. Motion at 2–3 ("Presidio wrongly alleged it had no knowledge of or role in the deal Spitfire struck by which it would not object to the sale of Debtor's assets to Presidio in exchange for Spitfire retaining its claims against Presidio."). There was no such "exchange" or understanding; the Sale Order and Confirmation Order are clear and unambiguous and do not support Spitfire's contentions. It further defies logic that Presidio would proceed with the acquisition with knowledge that it would be subject to over a hundred million dollars of alleged damages by Spitfire because of an innocuous opt-out of third-party release language in the Confirmation Order. Spitfire introduced no evidence at the hearing to the contrary; it is too late to re-litigate this issue at a motion for reconsideration.

2. None of the arguments raised in the Motion meet or attempt to meet the high standard required in a motion for reconsideration; to the contrary, the Motion instead misrepresents the record before the Court and the Court's ruling and improperly attempts to present new evidence in support of Spitfire's baseless claims that this Court already has rejected. Given Spitfire's

[3] The *Confirmation Order* means the *Amended Order (I) Approving (A) the Adequacy of the Disclosure Statement and (B) the Prepetition Solicitation Procedures and (II) Confirming the Joint Prepackaged Plan of Liquidation of Templar Energy LLC and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Case No. 20-11441, D.I. 226].

acknowledgement of the standard for a motion for reconsideration but utter lack of properly establishing any credible argument in support thereof, Presidio requests that the Court award its costs and fees in connection with responding to the Motion.

3. Specifically, Spitfire seeks reconsideration of the Order and Bench Ruling based on three alleged errors that it maintains constitute a clear error of law or fact or manifest injustice. First, Spitfire argues that Presidio misrepresented to the Court its involvement in certain discussions Spitfire had with the Debtors and the "agreement preserving Spitfire's claims against Presidio," and the Court relied on such misrepresentation. Motion at 2–3. Second, Spitfire asserts the Court erred in its interpretation of language in the Confirmation Order preserving Spitfire's claims against Presidio. *Id.*, 4–5. Third, Spitfire suggests (contrary to the record and with no actual support) that the Court failed to address the applicability of the *Lone Star Industries, Inc. v. Liberty Mutual Insurance*, 131 B.R. 269 (D. Del. 1991) decision. *Id.*, 5–6. As set forth in detail below, there were no errors by the Court in application of law or fact, nor is there any manifest injustice or newly discovered evidence. The Motion is nothing more than poorly rehashed arguments that have already been considered and rejected by the Court. *See In re W.R. Grace & Co.*, 398 B.R. 368, 371 (D. Del. 2008). Accordingly, the Motion should be denied with prejudice and this Court should award Presidio fees and costs in connection with this proceeding.

ARGUMENT

4. The Motion falls well short of meeting the strict, well established standards followed by this Court. Federal Rule of Civil Procedure 59(e), made applicable by Federal Rule of Bankruptcy Procedure 9023, governs motions for reconsideration. *See In re Welded Constr., L.P.*, 2021 Bankr. LEXIS 345, *7 (Bankr. D. Del. Feb. 15, 2021). The purpose of a motion for reconsideration is to "correct manifest errors of law or fact or to present newly discovered

evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). Motions to reconsider "should be granted sparingly and may not be used to rehash arguments which have already been briefed by the parties and considered and decided by the Court." *In re W.R. Grace & Co.*, 398 B.R. 368, 371–72 (D. Del. 2008) (internal quotations omitted). "Reconsideration is not permitted to allow a 'second bite at the apple.'" *Id.* at 372 (quoting *Bhatnagar v. Surrenda Overseas Ltd.*, 52 F.3d 1220, 1231 (3d Cir. 1995)). "Litigants who fail in their 'first attempt to persuade a court to adopt its position may not use a motion for reconsideration either to attempt a new approach or correct mistakes it made in its previous one . . . [or] to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided.'" *Id.* (quoting *Kennedy Indus. v. Aparo*, Case No. 04-05967, 2006 WL 1892685, at *1 (E.D. Pa. July 6, 2006)); *see also Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990) ("[R]eargument and reconsideration requests are not a substitute for an appeal from a final judgment.") (internal quotations omitted).

5. The Third Circuit has provided that a party seeking reconsideration must demonstrate at least one of the following: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion . . ; or (3) the need to correct a clear error of law or fact or prevent a manifest injustice." *Max's Seafood Café by Lou Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999).

6. As an initial matter, Spitfire does not assert that there has been (nor has there been) an intervening change in the controlling law. *See* Motion at 2; *Max's Seafood*, 176 F.3d at 677. Nor does Spitfire contend that new evidence is available that was not available when this Court issued its Order. *Id.* Rather, Spitfire's Motion relies wholly on the third prong - "the need to correct a clear error of law or fact or prevent a manifest injustice." *Id.* A "clear error of law or fact" has been defined as "an error that is 'plain and indisputable, and that amounts to a complete

disregard of the controlling law or the credible evidence in the record.'" *In re Titus*, 479 B.R. 362, 368 (Bankr. W.D. Pa. 2012) (quoting *In re Oak Park Calabasas Condominium Ass'n*, 302 B.R. 682, 683 (Bankr. C.D. Cal. 2003). Similarly, "manifest injustice" has been defined as an error "apparent to the point of being indisputable" and where "the record presented must be so patently unfair and tainted that the error is manifestly clear to all who view it." *Id.* (quoting *In re Green Goblin, Inc.*, 2012 WL 1971143, *1 (Bankr. E.D. Pa. May 31, 2012)).

7. Despite its reliance on this third prong, Spitfire utterly fails to identify any clear error of law or fact or manifest injustice, or otherwise establish any other prong required in this circuit on a motion for reconsideration.

I. The Alleged Presidio Misrepresentation Does Not Constitute a Clear Error; Nor Can Spitfire Present Previously Available Evidence to Prove the Same.

8. Spitfire's contention that Presidio allegedly misrepresented its involvement in negotiating the Confirmation Order does not and cannot constitute a clear error of law or fact or manifest injustice.[4] *See* Motion at 3. Further, Spitfire's attempt to submit new arguments and previously available evidence to establish clear error or manifest injustice on its Motion must fail. For example, Spitfire impermissibly proffers an affidavit by David D. Le Norman (*see* Motion at Exhibit 1) (the "Le Norman Affidavit") regarding events from 2019 and 2020 and requests that this Court consider this previously available evidence that inexcusably was not presented to the Court in connection with the Motion to Enforce.[5] This Court should not consider the Le Norman

[4] Presidio did not make a misrepresentation during hearings before this Court. Presidio informed the Court that Presidio and Spitfire were engaged in discussions following the auction but before the Sale Hearing to see if the parties could reach a deal to assume the master services contract. *See* Jan. 14, 2021 Hr'g Tr. [D.I. 101] 10:24-11:1-5 ("Following the auction, but before the sale hearing that would take place on July 17th, at the urging of the debtors, Presidio and Spitfire engaged in discussions around the MSC to see if they could reach a deal to assume that contract. Unfortunately, the parties weren't able to and the MSC remained on the list of rejected contracts as the parties approached and entered the sale hearing.").

[5] The *Motion to Enforce* means *Presidio Petroleum LLC's Motion for Entry of An Order (I) Enforcing (A) the Sale Order and (B) the Confirmation Order, and (II) Granting Related Relief* [Case No. 20-11442, D.I. 44].

Affidavit, and the Court should reject Spitfire's request to present evidence that was available to, yet not submitted by, Spitfire when the Court considered the Motion to Enforce.

9. Controlling case law is clear that movants cannot submit previously available evidence on a motion for reconsideration; new evidence is required. *See Harsco Corp.*, 779 F.2d at 909 ("**Where evidence is not newly discovered, a party may not submit that evidence in support of a motion for reconsideration**.") (emphasis added); *see also In re ID Liquidation One, LLC*, No. 11-11046 (BLS), 2013 WL 6701911, at *1 (Bankr. D. Del. Dec. 19, 2013) ("New evidence 'for reconsideration purposes, does not refer to evidence that a party . . . submits to the court after an adverse ruling. Rather, new evidence in this context means evidence that a party could not earlier submit to the court because that evidence was not previously available.'") (quoting *Blystone v. Horn,* 664 F.3d 397, 415–16 (3d Cir.2011) (quoting *Howard Hess Dental Labs, Inc. v. Dentsply Int'l, Inc.,* 602 F.3d 237, 252 (3d Cir.2010))). Thus, Spitfire's Motion strategy to submit previously available evidence must fail. Moreover, nothing offered by Spitfire supports its patently false claim that there was some kind of agreement among the parties to preserve any claim Spitfire could assert against Presidio under the rejected MSC.

10. The main thrust of Spitfire's new argument (that it seeks to prove up with previously available, yet unsubmitted evidence) is that Presidio, purportedly, "wrongly alleged it had no knowledge of or role in the deal Spitfire struck by which [Spitfire] would not object to the sale of Debtor's assets to Presidio in exchange for Spitfire retaining its claims against Presidio." Motion at 2–3 (citing this Court's Confirmation Order [Case No. 20-11441, D.I. 226]). The Le Norman Affidavit merely states that releases (that would spring to life under the Stipulation if the MSC were assumed, which it was not) were discussed. Spitfire can offer no evidence that despite the express free and clear language of the Sale Order, Presidio agreed that Spitfire preserved the

claims under the MSC that Spitfire is pursuing in Texas. Accordingly, the argument not only fails to establish *clear* error or manifest injustice, it likewise fails to identify *any* error by this Court and, instead, merely rehashes its argument that was previously unsuccessful. *See In re W.R. Grace & Co.*, 398 B.R. at 372 ("Reconsideration is not permitted to allow a second bite at the apple. Litigants who fail in their first attempt to persuade a court to adopt its position may not use a motion for reconsideration either to attempt a new approach or correct mistakes it made in its previous one.") (internal quotations omitted).

11. Moreover, Spitfire's mischaracterization of Presidio's statements cannot establish clear error or manifest injustice because the statements identified by Spitfire are irrelevant to the conclusions contained in the Court's Order. This Court's Order makes clear, among other things, that (1) "[t]he Sale Order precludes and enjoins the assertion of the claims asserted against Presidio in the Texas Action" (Order ¶ 3); (2) "[t]he Sale Order authorized the sale of the Debtors assets free and clear of any Claims or Interests pursuant to Bankruptcy Code section 363(f)" (Order ¶ 4); and (3) that, pursuant to the Confirmation Order, "**any claims or damages Spitfire may have** arising from breach of the MSC **may be asserted only against the Debtors, not against Presidio**" (Order ¶ 7 (emphasis added)). Likewise, this Court's Order makes clear that "[p]ursuant to the Sale Order and Confirmation Order, **Spitfire does not possess any Claims against Presidio arising out of the Sale, or the rejection of the MSC**." *Id.* ¶ 8 (emphasis added). Spitfire's assertions regarding peripheral, extrinsic statements to a confirmation order have no bearing on the implementation, interpretation and enforcement of this Court's Sale Order. Such assertions are neither relevant to nor do they reveal an error (let alone a *clear* error) regarding this Court's

Order, which relied on the language in the Sale Order rather than any purported misstatements.[6] *Somerville v. Snyder*, No. CIV.A.98-219-GMS, 2002 WL 202104, at *1 (D. Del. Feb. 4, 2002) ("A motion for reconsideration is not appropriate where the matter to be reconsidered would not reasonably have altered the result previously reached by the court.") (citing *Brambles USA, Inc.*, 735 F. Supp. at 1240). As this Court held, the Sale Order provides for the "sale and transfer, free and clear, including expressly free and clear of any covenants" and it "is final, and it is effective."[7]

12. Further, during the January 14, 2021 hearing, the Court heard argument regarding the failed negotiation between Presidio and Spitfire and recognized that this was little more than a failed business negotiation.[8] Importantly, Spitfire's argument that Presidio allegedly misrepresented to this Court its involvement in certain discussions that Spitfire had with the Debtors—an unsupported and illogical argument that Spitfire's claims against Presidio were preserved in a way that contradicts the plain terms of the Sale Order—was neither supported by evidence nor briefed by Spitfire in its objection to the Motion to Enforce (the "Spitfire Objection") [*see* D.I. 73]. The argument is wholly argument of counsel and does not constitute evidence as a matter of law. *Shellenberger v. Summit Bancorp, Inc.*, 318 F.3d 183, 191 n.11 (3d Cir. 2003) ("remarks by counsel are not 'evidence'"). Spitfire's attempt in this late hour to brief its counsel's oral argument and proffer previously available evidence in support thereof on this Motion must fail in accordance with clear precedent. *See Harsco Corp.*, 779 F.2d at 909.

[6] Bench Ruling Hr'g Tr. [D.I. 102] 9:5-13 (clarifying that Spitfire's claims arose from the breach of the MSC and that Spitfire's claims could not be asserted against Presidio because Presidio acquired the assets free and clear, in accordance with the terms of the Sale Order).

[7] Bench Ruling Hr'g Tr. [D.I. 102] 8:24-9:1.

[8] Jan. 14, 2021 Hr'g Tr. [D.I. 101] 25:18-26:13 (arguing at the January 14, 2021 hearing that "Spitfire and Presidio were in intense discussions and negotiations. . . . And what happened out of that was, you know what, we're not going to be able to work these out right now or right away and maybe there will be an opportunity for discussion.").

13. Additionally, to the extent that Spitfire is implicitly arguing that Presidio somehow induced Spitfire to fail to object to the Sale Order, such argument should be rejected because it is too little, too late: it presents a new legal theory supported by evidence that could have been submitted earlier to this Court, and thus, cannot be presented now, on this Motion.[9] As stated above, this Court should reject Spitfire's attempt to effect an end-run around well-established procedure on a motion for reconsideration. *See Norfolk S. Ry. Co. v. G.W.S.I., Inc.*, No. CV 16-2094, 2018 WL 4466008, at *5 (E.D. Pa. Sept. 18, 2018) (denying motion for reconsideration, explaining that plaintiff had waived its argument, and rejecting plaintiff's attempt to raise new legal theory that could have been (but was not) presented earlier).

14. For the foregoing reasons, though Presidio disputes that any misrepresentations occurred, any alleged misrepresentation does not (and cannot) constitute a clear error of law or fact or manifest injustice, and this Court should reject Spitfire's arguments.

II. The Court's Interpretation of Language in the Confirmation Order Does Not Constitute Clear Error of Law or Fact or Manifest Injustice.

15. As with its argument regarding purported misrepresentations by Presidio, Spitfire's assertion that this Court erred in its interpretation of language in the Confirmation Order must fail because it is merely a request that the Court rethink its legal conclusion. *See Adams v. Carney*, No. CV 17-181-MPT, 2018 WL 3105113, at *2 (D. Del. June 25, 2018) ("A motion for reconsideration is not properly grounded on a request that a court rethink a decision already made."); *see also Brambles USA, Inc.*, 735 F. Supp. at 1240 ("[R]eargument and reconsideration requests are not a substitute for an appeal from a final judgment.") (internal quotations omitted).

[9] *See id.* Further, the timeline of the cases shows why this is unsupported by fact. The pleading wherein Spitfire relinquished its right to object is the Stipulation—a document negotiated and entered into before Presidio had even participated in the Debtors' auction. *See* Case No. 20-11441, D.I. 181.

16. Both in its objection to the Motion to Enforce and at the January 14, 2021 hearing, Spitfire previously argued that the language in paragraphs 39 and 45 of the Confirmation Order preserved Spitfire's right to assert all claims against Presidio.[10] In the Motion, Spitfire goes so far as to "doubt the Court was able to afford this language proper consideration because the [Confirmation Order] [D.I. 226] was not identified on the *Notice of Agenda Matters Scheduled for Hearing* [D.I. 80] regarding the Motion to Enforce, and therefore was not available to the Court during the conduct of the [January 14, 2021] hearing." Motion at 4. This statement ignores the record where the language was repeatedly read to Judge Shannon (*See* Jan. 14, 2021 Hr'g Tr. [D.I. 101] 31:23-33:19, 42:8-13:47:4); that the Court requested the Reorganized Debtors' counsel file and submit the correct Confirmation Order with the Court;[11] the Court took the matter under advisement; and the Confirmation Order was filed on the same day in accordance with this Court's request.[12] There is no reason to believe that this Court failed to consider the final Confirmation Order in the weeks between the hearing and its decision and Spitfire has no basis to suggest otherwise.

17. It is also clear from the Bench Ruling that the Court properly considered the language in paragraphs 39 and 45 of the Confirmation Order. In the Bench Ruling, the Court stated that "Spitfire did opt-out of any releases it would have granted under the plan in favor of Presidio,"[13] and "Spitfire also asserts that its opt-out of the plan releases preserved its rights to

[10] *See* D.I. 73 ¶ 39; Jan. 14, 2021 Hr'g Tr. [D.I. 101] 28:19-29:3 (arguing that paragraph 39 "is a very broad-reaching provision"); 31:16-21 (contending that Spitfire could "direct [its] claims in Texas court" despite this Court's orders and the Sale Order injunction); 32:5-33:9 (asserting that "Presidio and Spitfire are referenced specifically" in paragraph 45); 40:11-41:8 (contending that Spitfire had objections to the Sale but did not want to "hold up the sale . . . to hold up the plan, to hold up anything"); 54:10-55:7 (arguing the scope of paragraph 39).

[11] Jan. 14, 2021 Hr'g Tr. [D.I. 101] 45:20-22 ("All right, I need to get that document. Ms. Chapman, if you would be kind enough just to have that filed this afternoon.").

[12] D.I. 89.

[13] Bench Ruling Hr'g Tr. [D.I. 102] 6:4-6.

pursue Presidio on account of the rejected master services contract and damages and liabilities arising therefrom."[14] However, the Court ultimately disagreed with Spitfire's interpretation of the effect of the language in the Confirmation Order, concluding that Spitfire "preserved through its opt-out, any claims it may have had to assert *directly* against Presidio," but "Spitfire does not possess" any *direct* claims against Presidio arising out of the transfer of the Debtors' assets.[15] (emphasis added). Spitfire seeks reconsideration simply because it disagrees with the Court's legal conclusion. This is not a proper basis for a motion for reconsideration. *See Adams*, 2018 WL 3105113, at *2 ("A motion for reconsideration is not properly grounded on a request that a court rethink a decision already made.").

18. Further ignoring the standard of applicable case law on reconsideration motions, Spitfire presents a new legal argument that the Court's interpretation of the language in paragraph 45 of the Confirmation Order renders the language meaningless. *See* Motion at 5. This argument is erroneous because the Court found that the language in paragraph 45 of the Confirmation Order did preserve any *direct* claims against Presidio that Spitfire may have had.[16] This is not the same, however, as preserving successor claims under the MSC against Presidio that were eliminated in the Sale Order. Further, the fact that Spitfire could have, but did not, raise this argument previously, is fatal to Spitfire's argument. Therefore, the Court should decline to consider Spitfire's new argument. *See Adams*, 2018 WL 3105113, at *3 (denying movant's motion for reconsideration and declining to consider any of the movant's new arguments); *see also In re W.R. Grace & Co.*, 398 B.R. at 372 ("Litigants . . . may not use a motion for reconsideration . . . to argue

[14] Bench Ruling Hr'g Tr. [D.I. 102] 7:7-10.

[15] Bench Ruling Hr'g Tr. [D.I. 102] 9:3-13.

[16] Bench Ruling Hr'g Tr. [D.I. 102] 9:3-4 ("Spitfire presumably preserved through its opt-out, any claims it may have had to assert directly against Presidio.").

new facts or issues that inexcusably were not presented to the court in the matter previously decided.") (internal quotations omitted).

19. Thus, Spitfire's argument that this Court erred in its interpretation of language in the Confirmation Order fails, and this Court should deny the Motion.

III. There Is No Manifest Error of Law Regarding the Court's Consideration of *Lone Star*

20. In the Motion, Spitfire neither presents new law nor argues that there has been a change in intervening law regarding its procedurally improper request for the Court to abstain or stay the proceeding pending the Texas District Court's decision on the motion to transfer venue.[17] To the contrary, in the Motion, Spitfire again relies heavily on *Lone Star*, 131 B.R. 269, a thirty year old case it cited in the Spitfire Objection. *See*, Motion at 1, 5–6; Spitfire Objection ¶¶ 20–21. Spitfire's claim that the Court failed to abide by or even address *Lone Star* or its progeny could not be further from the truth. As is evident from the transcript of the Bench Hearing, the Court engaged both parties at the Bench Hearing regarding Spitfire's argument that the Motion to Enforce was not properly before the Court and the Court either did not have jurisdiction to hear it, or should abstain or stay the Motion to Enforce. Indeed, Spitfire's counsel specifically addressed *Lone Star* with the Court:

> MR. CARSEY: I furthermore find it problematic in light of Lone Star Industries that the Court is being asked to enter such an order when there were previous motions that were filed before the Northern District of Texas -- go ahead.
>
> THE COURT: So let's talk about that for a second because some of this issue -- and I saw your arguments regarding abstention or the idea that it's, you know, at best discretionary perhaps for me, and your suggestion is I should defer to the Texas court where the matter is pending and the parties are already litigating, that's where the stuff is, I get that, I understand that argument, which is largely a venue argument. But let me ask you, this is a gating question and I think that if I'm going to put words in Presidio's mouth it would be, Judge, what we're -- this issue is about your order and, Judge, you know, listen to the arguments from Spitfire,

[17] *See* Fed. R. Bankr. P. 9023.

> they're going to talk about what the intention of the parties were in front of you, not in front of the Texas court, but what was negotiated, what was presented, a stipulation, et cetera, and therefore you're the proper court to deal with that.
>
> I acknowledge that any court can construe any court's order, but in some ways this might be, especially from your argument, more properly before me because I'm presumably familiar with the Spitfire issues, the disputes, and the resolution that led to entry of a sale order and a confirmation order. How do I deal with that?
>
> MR. CARSEY: Well, Your Honor, first of all, I would never question the Court's jurisdiction with regards to its orders --

Jan. 14, 2021 Hr'g Tr. [D.I. 101] 34:15-35:18.

21. In response, Mr. Persons correctly argued on behalf of Presidio that the limited relief requested in the Motion to Enforce to enforce the Court's Sale Order and Confirmation Order was separate from the Texas litigation and the properly tailored relief requested was properly before the Court.[18] Having considered the parties' arguments, including Spitfire's written and oral citations to *Lone Star*, the Court agreed with Presidio, holding:

> The relief sought by Presidio is limited to enforcement of clear provisions in a final sale order and confirmation order entered by this Court. This Court enjoys core jurisdiction to construe and enforce its own orders.
>
> This Court is the proper forum for consideration of this dispute. The master services contract was rejected under Section 365 of the Code and the debtors' assets were sold to Presidio, free and clear, pursuant to Section 363(f).
>
> Presidio seeks the benefit of the bargain it obtained by participating in a bankruptcy sale process and obtaining court approval of its transaction.
>
> I am not satisfied that this matter would be better or more appropriately presented in Texas. This type of litigation against a buyer from a counterparty to a debtors' rejected contract is precisely the type of litigation Section 363(f) is designed and intended to forestall.
>
> It would frustrate the purpose of this bankruptcy proceeding and Section 363(f) if Presidio were obliged to defend itself in another forum against claims that it is statutorily and contractually protected from; accordingly, Spitfire's request that this Court either abstain or transfer this matter back to Texas is denied.

[18] Jan. 14, 2021 Hr'g Tr. [D.I. 101] 16:12-17:16.

Bench Ruling Hr'g Tr. [D.I. 102] 7:15-8:12.

22. Not only does Spitfire blatantly ignore the record firmly establishing that the Court considered and rejected its *Lone Star* argument, Spitfire also incorrectly applies *Lone Star* to the matter at hand. In *Lone Star*, the proceeding at issue was a prepetition contract litigation matter involving a debtor (Lone Star) which later filed for bankruptcy protection. The court concluded that the state court litigation was a non-core matter dealing solely with state law. *See Lone Star*, 131 B.R. at 274 (stating "[n]o efficiency would be gained by having a bankruptcy court hear the [non-core] action"). Here, unlike in *Lone Star*, the Motion to Enforce was a core matter properly before the Court.[19]

23. In addition, the Court ruled on the Motion to Enforce, which was properly filed and pending before it, and did not "weigh in" on whether the motion to transfer venue should or should not be granted. Each case relied on by Spitfire is factually distinguishable, each was available at the time the Spitfire Objection was filed and none of them would compel a different outcome, let alone establish that the Court showed a "complete disregard of the controlling law."[20] *In re Maxus Energy Corp.*, 571 B.R. 650, 654 (Bankr. D. Del. 2017) (quoting *In re Titus*, 479 B.R. at 368); *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (manifest error "is not demonstrated by

[19] *See* Bench Ruling Hr'g Tr. [D.I. 102] 7:15-8:12.

[20] In the Motion, Spitfire also cites *CIT Communications Finance Corp. v. Level 3 Communications, LLC*, 483 F. Supp. 2d 380, n.14 (D. Del. 2007) ("*CIT*") and *In re Tricord Systems, Inc.*, Case No. 02-82361, Adv. 02-4943(MFW), 2003 WL 1565945, *2 (D. Del. March 24, 2003) ("*Tricord Systems*") in further support of its procedural *Lone Star* argument. These cases were decided well before Spitfire filed the Spitfire Objection, but were not cited or referenced in Spitfire's initial briefing. Reconsideration is not a tool for Spitfire to bolster the same arguments it has already made; nor is it appropriate for Spitfire to try to remedy its failure to include relevant case law in its initial briefing by adding old law and arguing it anew in the Motion. Notwithstanding the foregoing, *CIT* and *Tricord Systems* are, like *Lone Star*, distinguishable from the present case and not persuasive. In both *CIT* and *Tricord Systems*, the threshold issue before the court was whether the bankruptcy court had jurisdiction over the removed action. *See CIT*, 483 F. Supp. 2d at 384, n.14 (denying transfer and explaining that that the court's jurisdiction must be established before non-jurisdictional issues can be addressed); *Tricord Systems*, 2003 Bankr. LEXIS 384, *4–6 (ruling the bankruptcy court lacked jurisdiction to hear removed action once debtor defendant was dismissed and explaining "the action raises no bankruptcy issues but only issues related to Delaware state law. Therefore, we conclude that this action is not one related to a case under title 11. As such, this Court lacks jurisdiction to hear the action and it must be remanded.").

disappointment of losing party[,]" rather "it is the wholesale disregard, misapplication, or failure to recognize controlling precedent") (internal quotations omitted). Further, mere assertions that the Court failed to consider certain cases cited by Spitfire fall well short of the manifest error that must be established for reconsideration.

RESERVATION OF RIGHTS

24. Presidio reserves all rights with respect to the foregoing and reserves the right to raise any other and additional objections prior to or at the hearing on the Motion.

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WHEREFORE, Presidio respectfully requests that the Court deny the Motion with prejudice, grant Presidio its fees and expenses incurred in responding to the Motion and grant any other or further relief that is just and proper.

Dated: March 26, 2021

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