

JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
David G. Heiman (admitted *pro hac vice*)
Carl E. Black (admitted *pro hac vice*)
Thomas A. Wilson (admitted *pro hac vice*)

Attorneys for Debtors and Debtors in Possession

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
J.R. Smith (VSB No. 41913)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,

Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

**NOTICE OF FILING OF REVISED PROPOSED ORDER REGARDING MOTION OF
THE DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING PAYMENTS
UNDER 2015 ANNUAL INCENTIVE BONUS PLAN AND (II) APPROVING KEY
EMPLOYEE INCENTIVE PLAN FOR CERTAIN INSIDER EMPLOYEES FOR 2016**

PLEASE TAKE NOTICE of the following:

1. On December 3, 2015, the Debtors filed the *Motion of the Debtors for Entry of an Order (I) Authorizing Payments Under 2015 Annual Incentive Bonus Plan and (II) Approving Key Employee Incentive Plan for Certain Insider Employees for 2016* (Docket No. 1038) (the "Motion").¹

2. By the Motion, the Debtors requested that the Court enter an order substantially in the form attached thereto as Exhibit A, (a) authorizing the Debtors to make payments to certain Executive Insiders under the Debtors' annual incentive bonus program (the "AIB") for the 2015 program year and (b) approving the Debtors' proposed key employee incentive plan (the "KEIP") with respect to certain KEIP Participants for 2016.

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.



3. The Debtors have been engaged in negotiations and discovery with various parties, including the official committee of unsecured creditors appointed in these chapter 11 cases (the "Creditors' Committee"), regarding the relief requested in the Motion with respect to the KEIP.²

4. As a result of these negotiations, the Creditors' Committee has agreed not to object to the relief requested in the Motion, subject to the Debtors making certain revisions to the terms of the proposed KEIP.

5. Attached hereto as Exhibit 1 is a revised proposed form of order approving the relief requested in the Motion with respect to the AIB and the KEIP, as revised (the "Revised Proposed Order").

6. Attached as Annex 1 to the Revised Proposed Order is a table identifying the revisions to the KEIP agreed-upon between the Debtors and the Creditors' Committee. These revisions include, among others: (a) the elimination of one of the two performance periods provided for under the KEIP as proposed in the Motion (the period from January 1, 2016 through March 31, 2016) and its replacement with a single performance period from January 1, 2016 through June 30, 2016; (b) an increase of one of the liquidity targets as of the end of the performance period from \$800 million to \$825 million; and (c) the waiver of all claims under any pending retention agreement by each of the KEIP Participants. In addition, the aggregate on-target cost of the KEIP has decreased from approximately \$7.4 million to approximately \$6.8 million as a result of the departure of one Executive Insider and one other KEIP Participant (together, the "Departed KEIP Participants") since the Debtors filed the Motion.

7. Attached hereto as Exhibit 2 is a redline of the Revised Proposed Order against the Order as proposed in the Motion.

8. Attached hereto as Exhibit 3 is a revised copy of Appendix 2 to the Romanchek Declaration (the "Revised Appendix"), which has been revised to reflect the departure of the Departed KEIP Participants certain adjustments made to the salary and target payout opportunity data as a result of the related promotion of one of the remaining Executive Insiders. The Revised Appendix has been filed under seal pursuant to the *Motion of the Debtors, Pursuant to Sections 107(b)(1) and 107(c)(1) of the Bankruptcy Code and Bankruptcy Rule 9018, to File Under Seal Appendix 2 to Declaration of Robert Romanchek in Support of Motion of the Debtors for Entry of an Order (I) Authorizing Payments Under 2015 Annual Incentive Bonus Plan and (II) Approving Key Employee Incentive Plan for Certain Insider Employees for 2016* (Docket No. 1039).

9. A hearing on the relief requested in the Motion, as revised, is scheduled before the Honorable Kevin R. Huennekens, United States Bankruptcy Judge, at 10:00 a.m.

² Only the official committee of retired employees appointed in these chapter 11 cases filed a timely objection (Docket No. 1067) to the relief requested in the Motion with respect to the AIB. On December 16, 2015, the Debtors filed a reply (Docket No. 1111) in support of its authority to make AIB payments to the Executive Insiders. The deadline for objections to the KEIP currently is scheduled for January 16, 2015.

(prevailing Eastern Time) on January 21, 2016, at the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, 701 East Broad Street, Room 5000, Richmond, Virginia 23219.

Dated: January 14, 2016
Richmond, Virginia

Respectfully submitted,

/s/ Henry P. (Toby) Long, III
Tyler P. Brown (VSB No. 28072)
J.R. Smith (VSB No. 41913)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218

and

David G. Heiman (admitted *pro hac vice*)
Carl E. Black (admitted *pro hac vice*)
Thomas A. Wilson (admitted *pro hac vice*)
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212

ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

Revised Proposed Order

JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
David G. Heiman (admitted *pro hac vice*)
Carl E. Black (admitted *pro hac vice*)
Thomas A. Wilson (admitted *pro hac vice*)

Attorneys for Debtors and Debtors in Possession

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
J.R. Smith (VSB No. 41913)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,

Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

**ORDER (I) AUTHORIZING PAYMENTS UNDER
2015 ANNUAL INCENTIVE BONUS PLAN AND (II) APPROVING KEY
EMPLOYEE INCENTIVE PLAN FOR CERTAIN INSIDER EMPLOYEES FOR 2016**

This matter coming before the Court on the *Motion of the Debtors for Entry of an Order (I) Authorizing Payments Under 2015 Annual Incentive Bonus Plan and (II) Approving Key Employee Incentive Plan for Certain Insider Employees for 2016* (Docket No. 1038) (the "Motion"),¹ filed by the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"); the official committee of retired employees appointed in these chapter 11 cases having filed the *Objection to Debtors Motion for Entry of an Order (I) Authorizing Payments Under 2015 Annual Incentive Bonus Plan; and (II) Approving Key*

¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

Employee Incentive Plan for Certain Insider Employees for 2016 (Docket No. 1067)

(the "Retiree Committee Objection"); the Debtors having filed the *Reply in Support of Debtors' Request for Authority to Make Payments Under 2015 Annual Incentive Bonus Plan* (Docket No. 1111) (the "2015 AIB Reply") and the supplemental declaration of Robert Romanchek, which was attached as Exhibit A thereto (the "Supplemental Romanchek Declaration" and, collectively with the Hassey Declaration, the Romanchek Declaration and the Carmody Declaration, the "Declarations"); the Court having reviewed the Motion, the Declarations, the Retiree Committee Objection and the 2015 AIB Reply and having considered the statements of counsel and evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court being advised that (a) the official committee of unsecured creditors appointed in these chapter 11 cases (the "Creditors' Committee") has agreed not to object to the relief requested in the Motion subject to the Debtors' agreement to revise the terms of the KEIP as described on the chart attached hereto as Annex 1 (such program, as revised, the "Revised KEIP") and (b) the Debtors have agreed to the terms of the Revised KEIP; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, (d) notice of the Motion and the Hearing was sufficient under the circumstances, (e) the Debtors may make payments under the AIB with respect to the remaining Executive Insiders for 2015 in the ordinary course of their businesses, (f) a sound business purpose exists for the Debtors' implementation of the Revised KEIP, which is not designed primarily for retentive effect and is justified by the facts and circumstances of these chapter 11 cases in that it is narrowly tailored to incent the remaining KEIP Participants who are vital to the Debtors' successful restructuring and the maximization of value for the benefit of all parties in

interest; and the Court finding that the relief sought in the Motion, as revised, is in the best interests of the Debtors, their estates, creditors and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion, the Declarations and the Reply and at the Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein and the Retiree Committee Objection is OVERRULED.

2. The Debtors are authorized, but not directed, to make payments to the remaining Executive Insiders under the 2015 AIB in the ordinary course of business; provided, however, that the Debtors will provide the Creditors' Committee and DIP Agent with five business days' written notice (the "AIB Notice Period") or obtain a further order of the Court prior to paying any bonus or other amount pursuant to the AIB (a "Proposed AIB Payment"). The Debtors will simultaneously provide the Creditors' Committee and the DIP Agent with the amount of the Proposed AIB Payment, together with information establishing the basis for such Proposed AIB Payment (in the form of the applicable performance goals, levels of achievement, payout metrics and all other relevant information). Should the Committee or the DIP Agent object to the Proposed AIB Payment, the Committee or the DIP Agent, as applicable, shall file an objection (an "AIB Payment Objection") to such Proposed AIB Payment within the AIB Notice Period setting forth the basis for such AIB Payment Objection, which shall be heard on an expedited basis. If each of the Committee and the DIP Agent either (a) indicates in writing (including email) that it does not object to a Proposed AIB Payment or (b) fails to file an AIB Payment Objection within the AIB Notice Period, the Debtors may make the Proposed AIB Payment. If an AIB Payment Objection is filed, the Debtors shall not make the Proposed AIB

Payment unless and until such AIB Payment Objection is overruled or resolved by agreement between the Debtors and the Committee or the DIP Agent, as applicable.

3. Pursuant to section 363(b)(1) and 503(c)(3) of the Bankruptcy Code, the Revised KEIP is approved in its entirety, and the Debtors are authorized to implement the Revised KEIP and to make any payments thereunder to the remaining KEIP Participants; provided, however, that the Debtors will provide the Creditors' Committee and the DIP Agent with five business days' written notice (the "KEIP Notice Period") or obtain a further order of the Court prior to paying any bonus or other amount pursuant to the Revised KEIP (a "Proposed KEIP Payment"). The Debtors will simultaneously provide the Creditors' Committee and the DIP Agent with the amount of the Proposed KEIP Payment, together with information establishing the basis for such Proposed KEIP Payment (in the form of the applicable performance goals, levels of achievement, payout metrics and all other relevant information). Should the Committee or the DIP Agent object to the Proposed KEIP Payment, the Committee or the DIP Agent, as applicable, shall file an objection (a "KEIP Payment Objection") to such Proposed KEIP Payment within the KEIP Notice Period setting forth the basis for such KEIP Payment Objection, which shall be heard on an expedited basis. If each of the Committee and the DIP Agent either (a) indicates in writing (including email) that it does not object to a Proposed KEIP Payment or (b) fails to file a KEIP Payment Objection within the KEIP Notice Period, the Debtors may make the Proposed KEIP Payment. If a KEIP Payment Objection is filed, the Debtors shall not make the Proposed KEIP Payment unless and until such KEIP Payment Objection is overruled or resolved by agreement between the Debtors and the Committee or the DIP Agent, as applicable.

4. The authorization hereunder to make payments to the remaining KEIP Participants pursuant to the Revised KEIP, and to the remaining Executive Insiders pursuant to the AIB, shall not create any obligation on the part of the Debtors or their officers, directors, attorneys or agents to make payments under the Revised KEIP or the AIB, respectively, unless the participants meet the necessary conditions under the Revised KEIP or the AIB, as applicable.

5. The Debtors are authorized to execute and deliver all instruments and documents, and take all such other actions as may be necessary or appropriate to implement, effectuate and fully perform under and in accordance with this Order, the Revised KEIP and the AIB.

6. The terms and conditions of this Order shall be immediately effective and enforceable upon entry.

7. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: _____, 2016
Richmond, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

Respectfully submitted,

/s/ Henry P. (Toby) Long, III
Tyler P. Brown (VSB No. 28072)
J.R. Smith (VSB No. 41913)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218

and

David G. Heiman (admitted *pro hac vice*)
Carl E. Black (admitted *pro hac vice*)
Thomas A. Wilson (admitted *pro hac vice*)
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212

*Attorneys for the Debtors
and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Henry P. (Toby) Long, III

ANNEX A

COMPARISON OF KEY EMPLOYEE INCENTIVE PROGRAM AS PROPOSED AND AS REVISED¹

AS PROPOSED IN THE MOTION						AS REVISED				
METRIC	WEIGHT	AGGREGATE TARGET OPPORTUNITY	PERIOD	PAYOUT LEVELS AND PERCENTAGE OF PERFORMANCE OPPORTUNITY	PERFORMANCE GOALS	WEIGHT	AGGREGATE TARGET OPPORTUNITY ²	PERIOD ³	PAYOUT LEVELS AND PERCENTAGE OF PERFORMANCE OPPORTUNITY ⁴	PERFORMANCE GOALS ⁵
Cost Savings ⁶	15%	\$1.11 million	1/1/16 – 3/31/16	Threshold (50%)	\$42 million	30%	\$2.04 million	1/1/16 – 6/30/16	Threshold (50%)	\$64 million
				Target (100%)	\$50 million				Target (100%)	\$75 million
				Maximum (200%)	\$55 million				Maximum (175%)	\$82 million
	15%	\$1.11 million	4/1/16 – 6/30/16	Threshold (50%)	\$64 million				Target (100%)	\$75 million
				Target (100%)	\$75 million				Maximum (175%)	\$82 million
				Maximum (200%)	\$82 million					
Liquidity ⁷	27.5%	\$2.035 million	1/1/16 – 3/31/16	Threshold (50%)	\$750 million	55%	\$3.75 million	1/1/16 – 6/30/16	Threshold (50%)	\$675 million
				Target (100%)	\$850 million				Target (100%)	\$775 million
				Maximum (200%)	\$900 million				Maximum (175%)	\$825 million ⁸
	27.5%	\$2.035 million	4/1/16 – 6/30/16	Threshold (50%)	\$675 million				Target (100%)	\$775 million
				Target (100%)	\$775 million				Maximum (175%)	\$825 million ⁸
				Maximum (200%)	\$800 million					
Safety	3.75%	\$0.278 million	1/1/16 – 3/31/16	Threshold (50%)	2.78	7.5%	\$0.511 million	1/1/16 – 6/30/16	Threshold (50%)	2.78
				Target (100%)	2.42				Target (100%)	2.42
				Maximum (200%)	2.18 or less				Maximum (175%)	2.18 or less
	3.75%	\$0.278 million	4/1/16 – 6/30/16	Threshold (50%)	2.78				Target (100%)	2.42
				Target (100%)	2.42				Maximum (175%)	2.18 or less
				Maximum (200%)	2.18 or less					
Environmental	3.75%	\$0.278 million	1/1/16 – 3/31/16	Threshold (50%)	23.0	7.5%	\$0.511 million	1/1/16 – 6/30/16	Threshold (50%)	23.0
				Target (100%)	20.0				Target (100%)	20.0
				Maximum (200%)	18.0 or less				Maximum (175%)	18.0 or less
	3.75%	\$0.278 million	4/1/16 – 6/30/16	Threshold (50%)	23.0				Target (100%)	20.0
				Target (100%)	20.0				Maximum (175%)	18.0 or less
				Maximum (200%)	18.0 or less					
Total	100%	\$7.402 million				100%	\$6.816 million⁹			

Capitalized terms not otherwise defined herein have the meanings given to them in the *Motion of the Debtors for Entry of an Order (I) Authorizing Payments Under 2015 Annual Incentive Bonus Plan and (II) Approving Key Employee Incentive Plan for Certain Insider Employees for 2016* (Docket No. 1038) (the "Motion").

Award entitlement shall be made as of June 30, 2016 with any award payments to be made as follows: (a) 75% to be paid within 30 days of the determination date; and (b) 25% to be paid upon confirmation of a chapter 11 plan, if such a plan is confirmed by December 31, 2016 (otherwise the 25% payment is forfeited). Under the KEIP as proposed in the Motion, incentive award payments were to be split into thirds with: (a) one-third to be paid within 30 days following the conclusion of the applicable Performance Period; (b) one-third to be paid on September 30, 2016 or, if earlier, the date of a confirmed chapter 11 plan; and (c) one-third to be paid upon confirmation of a chapter 11 plan, if such a plan is confirmed by December 31, 2016 (otherwise such portion would have been forfeited as above).

All award payments shall be deemed earned at target levels upon the occurrence of either of the following prior to June 30, 2016: (a) confirmation of a chapter 11 plan; or (b) one or more sales or change of control transactions, or combinations thereof (including by way of a credit bid) for assets representing more than 50% of the Debtors' assets on the basis of 2015 full year revenues or operating cash flow (which is defined as coal margin less capital expenditures plus an addback of any expenses associated with asset retirement obligations less all cash asset retirement obligation costs). Under the KEIP as proposed in the Motion, upon the occurrence of: (a) confirmation of a chapter 11 plan; (b) sale of substantially all (more than 70%) of the Debtors' assets, as measured by revenues or EBITDA; or (c) any change of control transaction, including a transaction involving a credit bid for more than 50% of the Debtors' assets on the basis of revenues or EBITDA, all award payments were to be deemed earned at target levels with respect to each Performance Period that is outstanding on the date of such transaction.

Any KEIP Participant who is terminated without cause will remain eligible to receive payments in the normal course under the KEIP based on actual performance. Any KEIP Participant who is terminated for cause will forfeit any entitlement to any incentive award payout under the KEIP. All KEIP Participants shall be deemed to have waived any claim against the Debtors' estates on account of any retention agreement that had not expired as of the Petition Date.

The Performance Periods proposed in the Motion have been combined into a single Performance Period from January 1, 2016 to June 30, 2016. Except as noted, the targets attributable to the Performance Period ending June 30, 2016 under the KEIP, as originally proposed, are applicable to the KEIP, as revised.

The payout percentage at the maximum level has been reduced from 200% to 175% under the revised KEIP.

If threshold is met or exceeded, performance and award payout shall be determined through proration between levels up to maximum. Performance targets shall be adjusted upon consummation of asset sales or other financing related transactions to neutralize the impact from such transactions.

The costs savings metric was designated as the "Value Enhancement Plan" (the "VEP") in the Motion and has been redesignated as the "Alpha Performance Enhancement Plan" (the "APEP") in the KEIP, as revised. Just as with respect to the VEP, the APEP measures annualized savings realized through executed initiatives. The U.S. Trustee and the Creditors' Committee shall have the right to review performance against all KEIP targets under the procedures set forth in the order approving the Motion, including with respect to (a) the calculation of APEP savings initiatives and (b) confirmation that such APEP initiatives do not duplicate 2015 AIB savings initiatives.

-
- 7 The liquidity metric has been redesignated simply as "Adjusted Ending Book Cash" under the revised KEIP. Adjusted Ending Book Cash is calculated as: (a) the sum of all amounts in all bank accounts in the Debtors' Cash Management System plus all Managed Securities Accounts (as such terms are defined in the *Final Order, Pursuant to Sections 345, 363(c)(1), 503(b)(1) and 553 of the Bankruptcy Code and Bankruptcy Rules 6003(b) and 6004(h): (A) Approving the Continued Use of the Debtors' Cash Management System, Bank Accounts and Business Forms; (B) Granting a Waiver of the Requirements of Section 345(b) and Certain of the US Trustee's Operating Guidelines; (C) Permitting Continued Intercompany Transactions; (D) Preserving and Permitting the Exercise of Intercompany Setoff Rights; and (E) Authorizing Banks to Honor Certain Transfers and Charge Certain Fees and Other Amounts* (Docket No. 624), excluding any amounts held in restricted accounts to collateralize letters of credit; (b) less all outstanding checks as of the measurement date; (c) plus all payments made with respect to any State liability settlements prior to or on the measurement date. Adjusted Ending Book Cash includes cash from the liquidation of shares of Rice Energy Company ("Rice Energy") held by the Debtors as of the Petition Date but excludes the value of Rice Energy shares still held by the Debtors or the proceeds of postpetition sales of Rice Energy shares.
- 8 The maximum goal under the liquidity metric has been increased from \$800 million to \$825 million under the revised KEIP.
- 9 The decrease of approximately \$0.586 million in the aggregate target opportunity under the KEIP, as revised, results from the departure of two KEIP Participants since the filing of the Motion. The total exceeds the sum of the cells above as a result of rounding.

EXHIBIT 2

Revised Proposed Order Redline

JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
David G. Heiman (admitted *pro hac vice*)
Carl E. Black (admitted *pro hac vice*)
Thomas A. Wilson (admitted *pro hac vice*)

Attorneys for Debtors and Debtors in Possession

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
J.R. Smith (VSB No. 41913)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,

Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

**ORDER (I) AUTHORIZING PAYMENTS UNDER
2015 ANNUAL INCENTIVE BONUS PLAN AND (II) APPROVING KEY
EMPLOYEE INCENTIVE PLAN FOR CERTAIN INSIDER EMPLOYEES FOR 2016**

This matter coming before the Court on the *Motion of the Debtors for Entry of an Order (I) Authorizing Payments Under 2015 Annual Incentive Bonus Plan and (II) Approving Key Employee Incentive Plan for Certain Insider Employees for 2016* ([Docket No. 1038](#)) (the "Motion"),¹ filed by the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"); the [official committee of retired employees appointed in these chapter 11 cases having filed the *Objection to Debtors Motion for Entry of an Order \(I\)*](#)

¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

Authorizing Payments Under 2015 Annual Incentive Bonus Plan; and (II) Approving Key Employee Incentive Plan for Certain Insider Employees for 2016 (Docket No. 1067) (the "Retiree Committee Objection"); the Debtors having filed the Reply in Support of Debtors' Request for Authority to Make Payments Under 2015 Annual Incentive Bonus Plan (Docket No. 1111) (the "2015 AIB Reply") and the supplemental declaration of Robert Romanchek, which was attached as Exhibit A thereto (the "Supplemental Romanchek Declaration" and, collectively with the Hassey Declaration, the Romanchek Declaration and the Carmody Declaration, the "Declarations"); the Court having reviewed the Motion, the ~~Hassey Declaration and the Romanchek Declaration~~ Declarations, the Retiree Committee Objection and the 2015 AIB Reply and having considered the statements of counsel and evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court being advised that (a) the official committee of unsecured creditors appointed in these chapter 11 cases (the "Creditors' Committee") has agreed not to object to the relief requested in the Motion subject to the Debtors' agreement to revise the terms of the KEIP as described on the chart attached hereto as Annex 1 (such program, as revised, the "Revised KEIP") and (b) the Debtors have agreed to the terms of the Revised KEIP; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, (d) notice of the Motion and the Hearing was sufficient under the circumstances, (e) the Debtors may ~~continue~~ make payments under the AIB with respect to the remaining Executive Insiders for 2015 in the ordinary course of their businesses, (f) a sound business purpose exists for the Debtors' implementation of the Revised KEIP, which is not designed primarily for retentive effect and is justified by the facts and

circumstances of these chapter 11 cases in that it is narrowly tailored to incent the [remaining](#) KEIP Participants who are vital to the Debtors' successful restructuring and the maximization of value for the benefit of all parties in interest; and the Court finding that the relief sought in the Motion, [as revised](#), is in the best interests of the Debtors, their estates, creditors and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion, the ~~Hassey Declaration~~[Declarations](#) and the ~~Romanehek Declaration~~[Reply](#) and at the Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein [and the Retiree Committee Objection is OVERRULED](#).
2. The Debtors are authorized, but not directed, to make payments to the [remaining](#) Executive Insiders under the 2015 AIB in the ordinary course of business; provided, however, that the Debtors will provide the Creditors' Committee and DIP Agent with five business days' written notice (the "[AIB Notice Period](#)") or obtain a further order of the Court prior to paying any bonus or other amount pursuant to the AIB (a "Proposed [AIB Payment](#)"). The Debtors will simultaneously provide the Creditors' Committee and the DIP Agent with the amount of the Proposed [AIB](#) Payment, together with information establishing the basis for such Proposed [AIB](#) Payment (in the form of the applicable performance goals, levels of achievement, payout metrics and all other relevant information). Should the Committee or the DIP Agent object to the Proposed [AIB](#) Payment, the Committee or the DIP Agent, as applicable, shall file an objection (an "[AIB Payment Objection](#)") to such Proposed [AIB](#) Payment within the [AIB](#) Notice Period setting forth the basis for such [AIB Payment](#)

Objection, which ~~Objection~~ shall be heard on an expedited basis. If each of the Committee and the DIP Agent either (a) indicates in writing (including email) that it does not object to a Proposed AIB Payment or (b) fails to file an AIB Payment Objection within the AIB Notice Period, the Debtors may make the Proposed AIB Payment. If an AIB Payment Objection is filed, the Debtors shall not make the Proposed AIB Payment unless and until such AIB Payment Objection is overruled or resolved by agreement between the Debtors and the Committee or the DIP Agent, as applicable.

3. Pursuant to section 363(b)(1) and 503(c)(3) of the Bankruptcy Code, the Revised KEIP ~~for the KEIP Participants~~ is approved in its entirety, and the Debtors are authorized to implement the Revised KEIP and to make any payments thereunder ~~to the remaining KEIP Participants; provided, however, that the Debtors will provide the Creditors' Committee and the DIP Agent with five business days' written notice (the "KEIP Notice Period") or obtain a further order of the Court prior to paying any bonus or other amount pursuant to the Revised KEIP (a "Proposed KEIP Payment").~~ The Debtors will simultaneously provide the Creditors' Committee and the DIP Agent with the amount of the Proposed KEIP Payment, together with information establishing the basis for such Proposed KEIP Payment (in the form of the applicable performance goals, levels of achievement, payout metrics and all other relevant information). Should the Committee or the DIP Agent object to the Proposed KEIP Payment, the Committee or the DIP Agent, as applicable, shall file an objection (a "KEIP Payment Objection") to such Proposed KEIP Payment within the KEIP Notice Period setting forth the basis for such KEIP Payment Objection, which shall be heard on an expedited basis. If each of the Committee and the DIP Agent either (a) indicates in writing (including email) that it does not object to a Proposed KEIP Payment or (b) fails to

file a KEIP Payment Objection within the KEIP Notice Period, the Debtors may make the Proposed KEIP Payment. If a KEIP Payment Objection is filed, the Debtors shall not make the Proposed KEIP Payment unless and until such KEIP Payment Objection is overruled or resolved by agreement between the Debtors and the Committee or the DIP Agent, as applicable.

4. The authorization hereunder to make payments to the remaining KEIP Participants pursuant to the Revised KEIP ~~or~~, and to the remaining Executive Insiders pursuant to the AIB, shall not create any obligation on the part of the Debtors or their officers, directors, attorneys or agents to make payments under the Revised KEIP or the AIB, respectively, unless the participants meet the necessary conditions under the Revised KEIP or the AIB, as applicable.

5. The Debtors are authorized to execute and deliver all instruments and documents, and take all such other actions as may be necessary or appropriate to implement, effectuate and fully perform under and in accordance with this Order, the Revised KEIP and the AIB.

6. The terms and conditions of this Order shall be immediately effective and enforceable upon entry.

7. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: _____, ~~2015~~2016
Richmond, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

Respectfully submitted,

/s/ Henry P. (Toby) Long, III
Tyler P. Brown (VSB No. 28072)
J.R. Smith (VSB No. 41913)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218

and

David G. Heiman (admitted *pro hac vice*)
Carl E. Black (admitted *pro hac vice*)
Thomas A. Wilson (admitted *pro hac vice*)
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212

*Attorneys for the Debtors
and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Henry P. (Toby) Long, III

EXHIBIT 3

Revised Appendix

[Filed Under Seal]