



Alpha Natural Resources, Inc., et al.  
c/o KCC  
2335 Alaska Ave  
El Segundo, CA 90245

*c/007/038 Incoming  
CC: Steve A.*

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STATE OF UTAH  
1594 WEST NORTH TEMPLE, SUITE 1210  
SALT LAKE CITY UT 84114-5801





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*)

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)

*Proposed Attorneys for Debtors  
and Debtors in Possession*

**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)

**MOTION OF THE DEBTORS  
FOR AN ORDER ESTABLISHING PROCEDURES FOR  
THE SALE, TRANSFER OR ABANDONMENT OF MISCELLANEOUS  
AND DE MINIMIS ASSETS AND GRANTING CERTAIN RELATED RELIEF**

Alpha Natural Resources, Inc. ("ANR") and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), respectfully represent as follows:

**Background**

1. On August 3, 2015 (the "Petition Date"), the Debtors commenced their reorganization cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By order of the Court (Docket No. 129), the Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being



jointly administered. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. A comprehensive description of the Debtors' businesses and operations, capital structure and the events leading to the commencement of these chapter 11 cases can be found in the amended declarations of (a) Kevin S. Crutchfield, Chief Executive Officer and Chairman of the Board of Directors of ANR (Docket No. 45), and (b) Philip J. Cavatoni, Executive Vice President and Chief Financial and Strategy Officer of ANR (Docket No. 46), each of which was filed on the Petition Date.

#### **Jurisdiction**

3. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **Relief Requested**

4. Pursuant to sections 105, 363, 365 and 554 of the Bankruptcy Code, the Debtors hereby seek the entry of an order authorizing them to implement procedures (the "Miscellaneous Asset Procedures") by which the Debtors may, from time to time, sell or abandon miscellaneous real or personal property that is no longer needed in the Debtors' ongoing business activities (collectively, the "Miscellaneous Assets") by private sale or public auction (and pay any applicable broker commissions and/or auctioneer fees) without need for further Court approval, but subject to the procedures set forth below.



**Facts Relevant to This Motion**

5. The Debtors anticipate that, during the pendency of these cases and in the ordinary course of their operations, they will wish to sell, transfer or otherwise dispose of surplus, non-core Miscellaneous Assets that (a) are no longer necessary to their business; and (b) in most cases, will be of relatively *de minimis* value compared to the Debtors' total assets.<sup>1</sup> In addition, the Debtors may wish to sell Miscellaneous Assets pursuant to transactions that arguably may be outside of the ordinary course of their business (and, thus, will require Court approval pursuant to section 363(b)(1) of the Bankruptcy Code).<sup>2</sup> Although the Debtors intend to monetize Miscellaneous Assets if at all possible, circumstances may arise where (a) the cost of continuing to maintain, relocate and/or store a given Miscellaneous Asset outweighs any potential recovery from a future sale or transfer thereof; or (b) the Debtors are simply unable to find purchasers for, or reach acceptable terms for the sale of, a Miscellaneous Asset. In such circumstances, the Debtors may seek to abandon such property pursuant to section 554 of the Bankruptcy Code.<sup>3</sup> Finally, the disposition of certain Miscellaneous Assets may include the related assumption, assumption and assignment, or rejection of executory contracts under section 365 of the Bankruptcy Code.

6. Requiring Court approval of every such transaction identified above would be administratively burdensome for the Court and costly for the Debtors' estates,

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<sup>1</sup> Pursuant to section 363(c)(1) of the Bankruptcy Code, the Debtors may sell assets "in the ordinary course of business, without notice or a hearing." 11 U.S.C. § 363(c)(1).

<sup>2</sup> Section 363(b)(1) of the Bankruptcy Code provides in relevant part that a "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate[.]" 11 U.S.C. § 363(b)(1).

<sup>3</sup> Section 554 of the Bankruptcy Code provides in relevant part that "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).



especially in light of the relatively small size of the Miscellaneous Assets involved. Moreover, although the Debtors believe that, in many cases, small dispositions of assets such as those contemplated by this Motion may fall within the scope of the ordinary course of business doctrine under section 363(c) of the Bankruptcy Code, they believe that many purchasers will be uncomfortable consummating sales without confirmation that such sales are authorized. In other cases, the Debtors anticipate that purchasers will want confirmation that the sales will be free and clear of liens under section 363(f) of the Bankruptcy Code, or may require the assumption or assumption and assignment of related contracts under section 365 of the Bankruptcy Code. Similarly, the Debtors may seek to reject other contracts as unnecessary in light of the sale, transfer or abandonment of Miscellaneous Assets. The Debtors also believe that they would benefit from the ability to sell Miscellaneous Assets as promptly as possible where market opportunities arise.

7. Accordingly, the Debtors believe that it would be most efficient, and the proceeds realized with respect to such transactions will be maximized, if the Debtors are authorized to implement procedures that allow them to sell, transfer or abandon Miscellaneous Assets, or groups of such assets, and address related contracts, on an expedited basis without incurring the delay and costs of preparing, filing, serving and having hearings on motions for approval of each such disposition.

8. The Debtors further believe that, in appropriate circumstances as determined in the Debtors' business judgment, the use of brokers and auctions in certain circumstances may significantly aid in the timely disposition and realization of the maximum possible value for the Miscellaneous Assets. Accordingly, the Debtors also seek approval to pay applicable market rate broker commissions (collectively, the "Broker Commissions") and/or



auction fees (together with the Broker Commissions, the "Commissions") for brokers and auctioneers that may be utilized in connection with dispositions of Miscellaneous Assets.

9. The Miscellaneous Assets are subject to the liens of the lenders (collectively, the "DIP Lenders") under the Debtors' postpetition credit facility (the "DIP Financing") approved by the Court on an interim basis by an order entered on August 4, 2015 (Docket No. 82) (the "Interim DIP Order"). Additionally, prior to the Petition Date, the majority of the Debtors either entered into, or became guarantors under: (a) a Fifth Amended and Restated Credit Agreement, dated as of September 24, 2014 (the "Prepetition Credit Agreement"), under which the Debtors incurred certain term loan, revolving credit and letter of credit obligations secured by substantially all of the Debtors' assets; (b) certain indentures (together, the "Second Lien Notes Indentures"), dated May 20, 2014 and March 23, 2015, pursuant to which \$750 million in notes were issued (the "Second Lien Notes"), which are secured by a second priority lien on substantially the same assets securing the Debtors' obligations under the Prepetition Credit Agreement; and (c) an indenture governing certain 3.25% secured convertible senior notes issued in August 2008 by Massey Energy Company, due in 2015 (the "2015 Notes Indenture" and, collectively with the Prepetition Credit Agreement and the Second Lien Notes Indentures, the "Prepetition Loan Agreements"), which notes are secured, on an equal and ratable basis with the lenders under the Prepetition Credit Agreement, by certain mining properties. In addition, under the Interim DIP Order, the lenders, agents and trustees party to the Prepetition Loan Agreements (collectively, the "Prepetition Lenders") were granted certain adequate protection liens on the Debtors' assets. Accordingly, the Miscellaneous Assets also are subject to the liens of the Prepetition Lenders.



10. Moreover, other creditors may have or assert liens against certain of the Miscellaneous Assets (collectively, to the extent such liens are valid and properly perfected, the "Other Liens"). The DIP Lenders' liens, the Prepetition Lenders' liens and the Other Liens will attach to the net proceeds from the sales of Miscellaneous Assets, and such net proceeds will be utilized consistent with the provisions of the agreements governing the DIP Financing (together, the "DIP Financing Agreement"), the Interim DIP Order, any final order authorizing the Debtors to obtain the DIP Financing and other applicable Court orders or agreements with secured parties.

#### **Miscellaneous Asset Procedures**

##### ***Transactions Subject to the Miscellaneous Asset Procedures***

11. The Miscellaneous Asset Procedures will apply only to: (a) the private sale or transfer of Miscellaneous Assets involving, in each case, \$7,500,000 or less in total consideration (the "Sale Cap"), as measured by the amount of cash and other consideration (such as assumption of liabilities) to be received by the Debtors on account of the Miscellaneous Assets to be sold or transferred in any one transaction or in any series of related transactions; (b) the auction of any Miscellaneous Asset with a book value equal to or less than the Sale Cap; and (c) the abandonment of Miscellaneous Assets with a book value of \$5,000,000 or less.

##### ***Notice and Opportunity to Object***

12. Other than with respect to De Minimis Assets (as defined below), after the Debtors obtain any necessary consents required pursuant to the DIP Financing Agreement and enter into a contract or contracts (or bill of sale or other legal document) contemplating a sale or transfer of assets subject to the Miscellaneous Asset Procedures (a "Proposed Sale"), the Debtors will serve a notice of the Proposed Sale (a "Sale Notice") by hand delivery, overnight mail or email on: (a) the United States Trustee for the Eastern District of Virginia (the "U.S. Trustee");



(b) counsel to the official committee of unsecured creditors appointed in these chapter 11 cases (the "Creditors' Committee"); (c) Davis Polk & Wardwell LLP and McGuireWoods LLP, as co-counsel to Citibank, N.A., as administrative and collateral agent under the DIP Financing, and Citicorp North America, Inc., as administrative and collateral agent under the Prepetition Credit Agreement; (d) Kirkland & Ellis LLP, as counsel to an *ad hoc* group of holders of Second Lien Notes (the "Second Lien Noteholder Group"); (e) counsel to the indenture trustee under the 2015 Notes Indenture; (f) all other known parties holding or asserting Other Liens on or other interests in the assets that are the subject of the Proposed Sale and their respective counsel (if known); (g) all counterparties to executory contracts or unexpired leases proposed to be assumed, assumed and assigned, or rejected as part of the Proposed Sale; and (h) in connection with any sale or transfer of interests in real property, (i) any applicable federal or state (A) permitting or licensing authority, (B) environmental regulatory agency and/or (C) reclamation bonding entity (any such entity, a "Governmental Authority") and (ii) any non-Debtor party that has secured, through the issuance of a bond, guaranty or other form of credit support, any obligation of the Debtors with respect to such property (any such party, a "Surety" and, collectively with all parties identified in (a) through (g) above and the Governmental Authorities, the "Interested Parties").

13. If the Proposed Sale is to be effected by a private sale, the Sale Notice, at a minimum, will include the following information with respect to the Proposed Sale:

- (a) a description of the assets that are the subject of the Proposed Sale and their location(s);
- (b) the identity of the nondebtor party or parties to the Proposed Sale (the "Transferee(s)"), the service address of the Transferee(s) and any relationships of the Transferee(s) with the Debtors;



- (c) the identities of any parties known to the Debtors to hold liens on or other interests in the assets and a statement indicating that all such liens or interests are capable of monetary satisfaction;
- (d) the major economic terms and conditions of the Proposed Sale, including the amount of cash consideration and the nature, value and, if applicable, method of valuation of any non-cash consideration, as well as any material terms specific to the Proposed Sale;<sup>4</sup>
- (e) the executory contracts and unexpired leases, if any, that the applicable Debtor or Debtors propose to be assumed, assumed and assigned, or rejected as part of the Proposed Sale;
- (f) for any assumption, or assumption and assignment, of an executory contract or unexpired lease, the amounts required to cure any defaults pursuant to section 365(b) of the Bankruptcy Code (collectively, the "Cure Claims"), and a statement regarding the adequate assurance of future performance by the purchaser or transferee, consistent with section 365 of the Bankruptcy Code;
- (g) an affidavit of the broker, if any, pursuant to Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), that identifies the broker and the amount of the Commission, and that contains the disclosures required by Bankruptcy Rule 2014; and
- (h) instructions consistent with the terms described below regarding the procedures to assert objections to the Proposed Sale ("Objections").

14. If the Proposed Sale is to be effected by auction, the Sale Notice, at a minimum, will include the following information with respect to the Proposed Sale:

- (a) a description of the assets that are the subject of the Proposed Sale and their location(s);
- (b) the identities of any parties known to the Debtors to hold liens on or other interests in the assets and a statement indicating that all such liens or interests are capable of monetary satisfaction;

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<sup>4</sup> This information may be provided (in whole or in part) by attaching the applicable contract or contracts (or other relevant documents) to the Sale Notice. To the extent that the contract or contracts are not attached to the Sale Notice, the Debtors shall also serve a copy of such contract or contracts on the Interested Parties.



- (c) the executory contracts and unexpired leases, if any, that the applicable Debtor or Debtors propose to be assumed, assumed and assigned, or rejected as part of the Proposed Sale;
- (d) for any assumption, or assumption and assignment, of an executory contract or unexpired lease, the amounts of any Cure Claims;
- (e) the date, time and place of the auction;
- (f) the minimum acceptable bid (the "Minimum Bid");
- (g) any terms and conditions of sale to be imposed at the auction;
- (h) a copy of any documentation executed in contemplation of the Proposed Sale (e.g., a proposed form of purchase agreement);
- (i) an affidavit of a third party auctioneer, if any, pursuant to Bankruptcy Rule 2014, that identifies the auctioneer and the amount of the Commission, and that contains the disclosures required by Bankruptcy Rule 2014; and
- (j) instructions regarding the procedures to assert Objections.

15. After determining to abandon any Miscellaneous Assets (the "Proposed Abandonment"), the Debtors will serve a notice (the "Abandonment Notice") by hand delivery, overnight mail or email on the Interested Parties. The Abandonment Notice will specify:

- (a) the Miscellaneous Assets being abandoned;
- (b) a summary of the justifications for the abandonment;
- (c) the identities of any known parties holding or asserting liens or other interests in the relevant Miscellaneous Assets;
- (d) if applicable, the identity of the entity to which the Miscellaneous Assets will be abandoned; and
- (e) in connection with the abandonment of any interest in real property, a statement that neither any environmental condition related to such property nor the abandonment thereof presents any threat of an imminent and identifiable harm to public health and safety.

16. Interested Parties will have five business days after the date of service of the Sale Notice or Abandonment Notice, as applicable (the "Notice Period"), to object, pursuant to the objection procedures described below, to (a) the Proposed Sale and the payment of any



Commissions, (b) the Proposed Abandonment or (c) any related assumptions, assumptions and assignments, or rejections of executory contracts or unexpired leases. If (a) no Objections are properly asserted prior to expiration of the Notice Period and (b) the Debtors have obtained any requisite consent required pursuant to the DIP Financing Agreement in connection with the Proposed Sale or the Proposed Abandonment, the applicable Debtor or Debtors will be authorized, without further notice and without further Court approval, to: (a)(i) either (A) for Miscellaneous Assets to be sold by private sale, consummate the Proposed Sale in accordance with the terms and conditions of the underlying contract or contracts or (B) for Miscellaneous Assets to be sold at auction, conduct the auction and sell the assets at the auction, provided, however, that no sale at an auction may be completed for consideration below the Minimum Bid identified in the applicable Sale Notice;<sup>5</sup> and (ii) take such other actions as are necessary to close the transaction and collect the proceeds of such sale, including, without limitation, payment of any Commissions, and assumption, assumption and assignment, or rejection of the executory contracts and unexpired leases described in the Sale Notice and payment of the Cure Claims proposed in such notice; or (b) proceed with the Proposed Abandonment, including the rejection of any related executory contracts and unexpired leases. In addition, the applicable Debtor or Debtors may consummate a Proposed Sale or Proposed Abandonment prior to expiration of the applicable Notice Period if each Interested Party consents in writing to the Proposed Sale or Proposed Abandonment.

17. The applicable Proposed Sale, including the assumption, assumption and assignment, or rejection of executory contracts and unexpired leases proposed in connection with

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<sup>5</sup> If no Interested Party files an Objection to the Minimum Bid proposed for an auction, or any such Objections are resolved so that the auction may proceed, the Debtors may sell the applicable Miscellaneous Asset at the auction for any price above the Minimum Bid, even if the sale price exceeds the Sale Cap.



the sale, will be deemed fully authorized by the Court upon either (a) for a private sale, (i) the expiration of the Notice Period without the assertion of any Objections or (ii) the written consent of all Interested Parties; or (b) for a sale by auction, (i) the expiration of the Notice Period without the assertion of any Objections or the written consent of all Interested Parties and (ii) the Debtors' acceptance of a qualifying bid in excess of the Minimum Bid at the auction. If a sale transaction is completed at an auction, the Debtors will file with the Court and serve upon the Interested Parties a report of the results of the auction within 10 days after the conclusion of the auction. If a holder of a lien, claim or encumbrance receives a Sale Notice and does not object within the prescribed time period, such holder shall be deemed to have consented to the Proposed Sale.

18. If any significant economic terms of a Proposed Sale are amended after transmittal of the Sale Notice, but prior to the expiration of the Notice Period (including as part of the resolution of any Objections), the applicable Debtor or Debtors will send a revised Sale Notice to all Interested Parties describing the Proposed Sale, as amended. If a revised Sale Notice is required, the Notice Period will be extended for an additional five business days from the date of service of such revised Sale Notice.

***Objection Procedures***

19. Any Objections to a Proposed Sale or a Proposed Abandonment must be in writing and served on the Interested Parties, the Debtors and the Debtors' counsel and any Transferee(s) so as to be received by all such parties prior to expiration of the Notice Period. Each Objection must state with specificity the grounds for objection. If an Objection to a Proposed Sale or the Proposed Abandonment is properly served, the Proposed Sale or Proposed Abandonment may not proceed absent (a) written withdrawal of the Objection, (b) entry of an order of the Court specifically approving the Proposed Sale or the Proposed Abandonment or



(c) the submission of a Consent Order (defined below) in accordance with the procedures described below.

20. Any Objections may be resolved without a hearing by an order of the Court submitted on a consensual basis by the applicable Debtor or Debtors, any Transferee(s) and the objecting party (a "Consent Order"); provided, however, that if any significant economic terms of a Proposed Sale are modified by the Consent Order, the applicable Debtor or Debtors must: (a) prior to submission to the Court of the Consent Order, provide the Interested Parties with five business days' notice of the Consent Order and an opportunity to object to the terms thereof by transmitting a written statement of objection to the Debtors' counsel; and (b) with the Consent Order, provide the Court with a written certification that (i) such prior notice was given and (ii) no Interested Party timely asserted an objection to the Consent Order. If the Debtors are unable to resolve an Objection on a consensual basis, the applicable Debtor or Debtors may schedule the Proposed Sale or the Proposed Abandonment and the Objection for hearing at the next available omnibus hearing date in these chapter 11 cases by giving at least five business days' written notice of the hearing to any objecting party and any Transferee(s).

***De Minimis Assets***

21. Notwithstanding the notice procedures described above (the "Notice Procedures"), for (a) any transaction involving the private sale or transfer of a Miscellaneous Asset for less than \$2,000,000 in total consideration, as measured by the amount of cash and other consideration (such as assumption of liabilities) to be received by the Debtors on account of the Miscellaneous Assets to be sold or transferred in any one transaction or in any series of related transactions (a "De Minimis Private Sale"); (b) the auction of any Miscellaneous Asset with a book value equal to or less than \$2,000,000 (together with any De Minimis Private Sale, a "De Minimis Sale"); or (c) the abandonment of any non-real estate asset with a book value of



less than \$1,000,000 (a "De Minimis Abandonment"),<sup>6</sup> the applicable Debtor or Debtors will be authorized, without following the Notice Procedures and without further notice and further Court approval, to consummate the De Minimis Sale or De Minimis Abandonment and such De Minimis Sales or De Minimis Abandonments will be deemed fully authorized by the Court, provided that the Debtors have obtained any necessary consents required pursuant to the DIP Financing Agreement in connection with such De Minimis Sale or De Minimis Abandonment. Although notice or hearing will not be required for the Debtors to consummate a De Minimis Sale or a De Minimis Abandonment, the Debtors, at their discretion, (a) may use the Notice Procedures for any such sale or abandonment and (b) shall use the Notice Procedures in connection with any De Minimis Sale or De Minimis Abandonment involving the assumption, assumption and assignment, or rejection of an executory contract or unexpired lease.

*Effects of Sale*

22. Buyers of any assets sold pursuant to the Miscellaneous Asset Procedures will take title to the assets free and clear of liens, claims, encumbrances and other interests, pursuant to section 363(f) of the Bankruptcy Code. All such liens, claims, encumbrances and other interests will attach to the proceeds of the sale to the extent applicable state law or any relevant security agreement (or both) provide for the continuation of such liens, claims, encumbrances and other interests, with the same validity and priority as with respect to the assets. In addition, the Debtors propose that all buyers of any assets sold pursuant to the Miscellaneous

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<sup>6</sup> Any real property subject to oversight by a Governmental Authority (e.g., pursuant to an environmental order issued by a Governmental Authority) will be abandoned only pursuant to the Notice Procedures or by separate motion of the Debtors. Within 20 days after the end of any calendar month in which one or more De Minimis Abandonments is effected, the Debtors will file a written report on the docket listing such De Minimis Abandonment(s) and the effective date(s) thereof.



Asset Procedures be entitled to the protections of section 363(m) of the Bankruptcy Code.<sup>7</sup>

Finally, with respect to executory contracts to be assumed, or assumed and assigned, as part of any transaction under the Miscellaneous Asset Procedures, adequate assurance of future performance will be provided, and Cure Claims paid, consistent with section 365 of the Bankruptcy Code.<sup>8</sup>

### ***Reporting Requirements***

23. The Debtors will provide, to the extent practicable, a written report or reports, within 20 days after the end of each calendar month concerning any such sales, transfers or abandonments made pursuant to the Miscellaneous Asset Procedures (including the names of the purchasing parties and the types and amounts of the sales or abandonments) to the U.S. Trustee and counsel to the Creditors' Committee. No such reports will be provided, however, for any month where there are no such sales, transfers or abandonments.

### **Argument**

#### ***Approval of Sales under Section 363(b) of the Bankruptcy Code***

24. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course

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<sup>7</sup> Section 363(m) of the Bankruptcy Code provides as follows:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

<sup>8</sup> To the extent that any Cure Claims – the payment of which is made to, and redounds to the benefit of, the applicable contract or lease counterparty rather than the Debtors – are payable in connection with a transaction under the Miscellaneous Asset Procedures, such Cure Amounts will (a) not count against the Sale Cap to the extent paid by the purchaser of assets and (b) to the extent paid by the Debtors, be deducted from the total consideration received by the Debtors to be applied against the Sale Cap.



of business, property of the estate." 11 U.S.C. § 363(b)(1). The notice and hearing requirements contained in section 363(b)(1) of the Bankruptcy Code are satisfied if appropriate notice and an opportunity for hearing are given in light of the particular circumstances. See 11 U.S.C. § 102(1)(A) (defining "after notice and a hearing" to mean such notice and an opportunity for hearing "as [are] appropriate in the particular circumstances").

25. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, bankruptcy courts routinely authorize sales of a debtor's assets if such sale is based upon the sound business judgment of the debtor. See In re Glover, No. 09-74787, 2010 WL 5239918, at \*3 (Bankr. E.D. Va. Mar. 31, 2010) (stating that asset sales pursuant to section 363(b)(1) of the Bankruptcy Code are permitted where "a 'sound business purpose' exists for the sale") (citations omitted); In re W.A. Mallory Co., 214 B.R. 834, 836 (Bankr. E.D. Va. 1997) (same); see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1069 (2d Cir. 1983) (approval of an asset sale under section 363(b) of the Bankruptcy Code is appropriate if a "good business reason" exists to justify the sale; further noting that "[s]ection 363(b) of the Code seems on its face to confer upon the bankruptcy judge virtually unfettered discretion to authorize the use, sale or lease, other than in the ordinary course of business, of property of the estate"); In re Chateaugay Corp., 973 F.2d 141, 143 (2d Cir. 1992) (approval of section 363(b) sale is appropriate if good business reasons exist for such sale).

26. Courts generally will accord significant deference to a debtor's business judgment to sell assets outside the ordinary course of business. See W.A. Mallory Co., 214 B.R. at 836-37 ("[G]reat deference is given to a business in determining its own best interests."); see also In re Global Crossing Ltd., 295 B.R. 726, 744 n.58 (Bankr. S.D.N.Y. 2003)



("[T]he Court does not believe that it is appropriate for a bankruptcy court to substitute its own business judgment for that of the Debtors and their advisors, so long as they have satisfied the requirements articulated in the case law.").

***Approval of Abandonment under Section 554(a) of the Bankruptcy Code***

27. Section 554(a) of the Bankruptcy Code provides that "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Section 554(a) of the Bankruptcy Code thus requires two showings: first, the property to be abandoned must be property of the estate; second, the property to be abandoned must be burdensome or of inconsequential value or benefit to the debtor's estate.

28. The debtor-in-possession is afforded significant discretion in determining the value and benefits of particular property for purposes of the decision to abandon it. See Terjen v Santoro (In re Terjen), 154 B.R. 456, 458 (E.D. Va. 1993) (stating that "it is well settled that a trustee has discretion to abandon property in the best interests of the estate") (citations omitted), aff'd, 30 F.3d 131 (4th Cir. 1994); In re Interpictures, Inc., 168 B.R. 526, 535 (Bankr. E.D.N.Y. 1994) (stating that "abandonment is in the discretion of the [debtor], bounded only by that of the court").

29. This right to abandon exists so that "burdensome property" can be removed and the "best interests of the estate" will be furthered. South Chicago Disposal, Inc. v. LTV Steel Co., Inc. (In re Chateaugay Corp.), 130 B.R. 162, 166 (S.D.N.Y. 1991) (citation and quotation marks omitted); see also Alexandria Knolls W. Condo. Homes Council of Co-Owners v. Strelsky (In re Strelsky), 46 B.R. 178, 180 (Bankr. E.D. Va. 1985) ("The Trustee may relieve a debtor's estate from burdensome property or from property which is of inconsequential value by abandoning the property under section 554 of the Code.").



30. The Debtors expect to take all reasonable steps to monetize or otherwise maximize the value of their Miscellaneous Assets for the benefit of their chapter 11 estates. The costs associated with sales of certain Miscellaneous Assets, however, may exceed any possible proceeds thereof. The inability to consummate a commercially reasonable sale of Miscellaneous Assets would indicate that such assets have no meaningful monetary value. Further, the costs of maintaining or storing such assets may burden the Debtors' estates. Accordingly, the abandonment of Miscellaneous Assets pursuant to the procedures set forth herein is in the best interests of the Debtors' estates and should be approved.

***Approval of Proposed Sales or Proposed Abandonments on Shortened and Limited Notice***

31. Generally, Bankruptcy Rules 2002(a)(2) and 2002(i) require that a minimum of 21 days' notice of proposed sales of property outside the ordinary course of business be provided by mail to "the debtor, the trustee, all creditors and indenture trustees" and any committee appointed under section 1102 of the Bankruptcy Code. Fed. R. Bankr. P. 2002(a), (i). As noted above, the "notice" required by section 363(b)(1) of the Bankruptcy Code is "such notice as is appropriate in the particular circumstances." 11 U.S.C. § 102(1)(A). Pursuant to Bankruptcy Rule 2002(i), courts may limit notice of asset sales outside of the ordinary course of a debtor's business, even without a prior showing of cause, to the United States Trustee, any official committee appointed under section 1102 of the Bankruptcy Code and parties who have requested notice pursuant to Bankruptcy Rule 2002.

32. Bankruptcy courts have recognized that, when determining whether notice is appropriate under the circumstances for purposes of section 102(1)(A) of the Bankruptcy Code, they are "guided by fundamental notions of procedural due process." In re Lomas Fin. Corp., 212 B.R. 46, 54 (Bankr. D. Del. 1997). Due process "requires that any notice is 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action



and afford them an opportunity to present their objections.'" Id. (quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)). In sum, if basic due process is afforded to interested parties and appropriate cause is established, a court may determine that limited notice of an asset sale is appropriate.

33. The Debtors seek the approval of the Miscellaneous Asset Procedures to maximize the net value realized from sales of relatively immaterial or *de minimis* assets. These procedures will accommodate the smooth and timely consummation of such smaller asset sales. Under the circumstances, the usual process of obtaining Court approval of each Proposed Sale subject to the Miscellaneous Asset Procedures (a) would impose unnecessary administrative burdens on the Court and use valuable Court time at omnibus hearings, (b) would create costs to the Debtors' estates that may undermine or eliminate the economic benefits of the underlying transactions and (c) in some instances may hinder the Debtors' ability to take advantage of sale opportunities that are available only for a limited time. As such, the Debtors propose to streamline the process as described herein.

34. For the foregoing reasons, the Debtors submit that: (a) sufficient cause exists to implement the modified notice provisions proposed herein; and (b) these modified notice procedures will make the sale process for relatively immaterial or *de minimis* assets as efficient as possible, while preserving fully the rights of the Interested Parties.

35. The Debtors also believe that limiting service of the Sale Notices and Abandonment Notices to the Interested Parties is justified under the circumstances. The Interested Parties represent the key parties in interest who should receive notice of any Proposed Sale or Proposed Abandonment. In particular, Sale Notices and Abandonment Notices would be served on the primary parties representing the interests of unsecured creditors of the



Debtors' estates, i.e., the U.S. Trustee and counsel to the Creditors' Committee, as well as any relevant Governmental Authority or Surety. Under the circumstances, the Debtors believe that this manner of notice is appropriate and fully preserves necessary due process rights.

***Approval of Transactions Without a Hearing***

36. The sale of property outside of the ordinary course of business or the abandonment of property may occur only "after notice and a hearing." 11 U.S.C. §§ 363(b)(1) and 554(a). Such sales or abandonments are authorized without an actual hearing, however, if no party in interest timely requests such a hearing. 11 U.S.C. § 102(1)(B)(i) (notwithstanding any statutory requirement for "notice and a hearing," the Bankruptcy Code "authorizes an act without an actual hearing if such notice is given properly and if ... such a hearing is not requested timely by a party in interest"). Moreover, as described above, due process is satisfied if parties in interest are given "an *opportunity* to present their objections." Mullane, 339 U.S. at 314 (emphasis added).

37. The Debtors believe that the Miscellaneous Asset Procedures comport with the hearing requirements of the Bankruptcy Code and due process by providing an opportunity for Interested Parties to present Objections and request a hearing on each Proposed Sale and Proposed Abandonment. Under these circumstances, a Proposed Sale or a Proposed Abandonment may be approved without a hearing if, after being presented with the opportunity to object and seek a determination of the Court, no Interested Party requests a hearing.

38. With respect to De Minimis Sales and De Minimis Abandonments, the Debtors believe that the opportunity to object to this Motion and the hearing on this Motion are sufficient to satisfy the hearing requirements of the Bankruptcy Code and due process under the circumstances. The primary parties that will represent the interests of unsecured creditors of the Debtors' estates (i.e., the U.S. Trustee and counsel to the Creditors' Committee), as well as all



parties who have filed a request for notice pursuant to Bankruptcy Rule 2002 in these cases, are being given the opportunity to object to this Motion.

***Sales Free and Clear of Interests***

39. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of another party's interest in the property if (a) applicable nonbankruptcy law permits such a free-and-clear sale, (b) the holder of the interest consents, (c) the interest is a lien and the sales price of the property exceeds the value of all liens on the property, (d) the interest is in bona fide dispute or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. 11 U.S.C. § 363(f).

40. Assets encumbered by interests held by other parties may be sold pursuant to the Miscellaneous Asset Procedures only to the extent permitted by section 363(f) of the Bankruptcy Code. As such, the relief requested in this Motion leaves the requirements of section 363(f) of the Bankruptcy Code unaltered. Moreover, as noted above, the Debtors propose that such interests attach to the proceeds of the sales to the extent provided by applicable state law, any relevant security agreement or both.

***Protections of Section 363(m) of the Bankruptcy Code***

41. Section 363(m) of the Bankruptcy Code provides, in relevant part, that the reversal or modification on appeal of an authorization under section 363(b) of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. See 11 U.S.C. § 363(m). Although the Bankruptcy Code does not define the meaning of "good faith purchaser," the Fourth Circuit Court of Appeals has adopted "the traditional equitable definition that has been adopted by various courts of appeal: one who purchases the assets for



value, in good faith, and without notice of adverse claims." Willemain v. Kivitz, 764 F.2d 1019, 1023 (4th Cir. 1985) (citations and quotation marks omitted).

42. Here, the Debtors intend only to sell or transfer Miscellaneous Assets pursuant to arms' length transactions and in any Sale Notice will disclose any relationships of a Transferee to the Debtors. Moreover, Interested Parties will have notice of the Proposed Sale and an opportunity to object as set forth above. The Debtors, therefore, request that any buyer of Miscellaneous Assets pursuant to the Miscellaneous Asset Procedures be entitled to the protection afforded by section 363(m) of the Bankruptcy Code.

***Approval of Assumption, Assumption and Assignment, or Rejection, as Applicable, of Executory Contracts and Unexpired Leases***

43. The standard for a debtor to assume, assume and assign, or reject an executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code is whether the debtor's decision is made within its sound business judgment. See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (stating that the traditional standard applied by courts to authorize the rejection of an executory contract is that of "business judgment"); Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1046-47 (4th Cir. 1985) (applying the "sound business judgment rule" when reviewing rejection of an executory contract); Ryan, Inc. v. Circuit City Stores, Inc., No. 3:10-CV-496, 2010 WL 4735821, at \*3 (E.D. Va. Nov. 15, 2010) (noting that section 365 of the Bankruptcy Code "leaves the decision whether to assume or reject to the debtor's sound business judgment"); In re Glover, No. 09-74787, 2010 WL 5239918, at \*4 (Bankr. E.D. Va. Mar. 31, 2010) (with respect to the determination of whether a debtor in possession may assume or reject an executory contract or unexpired lease, "[t]he standard in this Circuit is whether the debtor in possession has exercised sound business judgment"); In re US Airways Grp., Inc., 287 B.R. 643, 645



(Bankr. E.D. Va. 2002) ("The standard in this Circuit for approving a request to reject an unexpired lease is whether the trustee or debtor in possession has exercised sound business judgment."); In re Extraction Techs. of Va., L.L.C., 296 B.R. 393, 399 (Bankr. E.D. Va. 2001) ("Section 365(a) of the Bankruptcy Code authorizes a debtor with approval of the court to assume or reject an executory contract or unexpired lease if the action is a reasonable exercise of debtor's business judgment and benefits debtor's estate.").

44. The Debtors anticipate that certain Proposed Sales will require a Debtor to dispose of executory contracts or unexpired leases that are related to the Miscellaneous Assets to be sold. As part of the negotiations with the purchaser or purchasers of the Miscellaneous Assets, the applicable Debtor may need to determine whether the purchaser will take assignment of such related contracts or leases that are assignable under applicable nonbankruptcy law or whether the Debtor instead should reject any such contracts or leases. Likewise, the Debtors anticipate that it may be prudent to reject certain executory contracts or unexpired leases in connection with the abandonment of certain Miscellaneous Assets.

45. The Debtors believe that any such determination will fall squarely within their business judgment and will be made in the best interests of such Debtor's estate and creditors. Moreover, under the Miscellaneous Asset Procedures, the assumption, assumption and assignment, or rejection of any contracts or leases will be accomplished only after providing notice (including, for any assumption, the amount of any Cure Claim) to the nondebtor parties to such contracts and leases and all other interested parties, with an opportunity for such parties to object. Accordingly, the requirements of section 365 of the Bankruptcy Code will be satisfied under the Miscellaneous Asset Procedures.



***Approval of Payment of Broker Commissions and Auction Fees***

46. The payment of the Commissions to brokers and auctioneers engaged by the Debtors in connection with the sale of Miscellaneous Assets pursuant to the Miscellaneous Asset Procedures is in the best interest of the Debtors' estates and their creditors. The Debtors believe that the use of brokers and auctioneers in the exercise of their business judgment will significantly aid in the timely disposition and realization of the maximum possible value for the Miscellaneous Assets. Payment of the Commissions pursuant to the Miscellaneous Asset Procedures will save the Debtors' estates the expenses associated with the filing of retention applications by the brokers and auctioneers and will avoid the incurrence of additional fees for preparing and prosecuting interim fee applications. The Commissions will represent only a fraction of the value of any Miscellaneous Assets sold pursuant to the Miscellaneous Asset Procedures and are not significant relative to the aggregate value of the Debtors' estates. The Debtors believe that payment of the Commissions pursuant to the Miscellaneous Asset Procedures will provide an efficient means of compensating brokers and auctioneers and avoid the incurrence of these unnecessary administrative and professional expenses. Accordingly, approval of the payment of the Commissions pursuant to the Miscellaneous Asset Procedures is in the best interest of the Debtors' estates and their creditors.

***Approval of Similar Procedures in Other Cases***

47. In light of the demonstrable benefits of streamlined procedures to sell small assets and the legal justifications described above, procedures similar to the Miscellaneous Asset Procedures have been approved in other chapter 11 cases in this District and elsewhere. See, e.g., In re Patriot Coal Corp., No. 15-32450 (Bankr. E.D. Va. June 25, 2015) (generally authorizing the sale of assets valued less than or equal to \$1.5 million with no advance notice and authorizing sales greater than \$1.5 million but less than or equal to \$5 million on 10 days' notice;



authorizing the abandonment of assets valued less than or equal to \$10 million on 10 days' notice); In re Edison Mission Energy, No. 12-49219 (Bankr. N.D. Ill. Jan. 17, 2013) (generally authorizing the sale of assets valued less than or equal to \$350,000 with no advance notice and authorizing sales greater than \$350,000 but less than or equal to \$5 million on 15 days' notice; authorizing the abandonment of assets valued less than or equal to \$1 million on 15 days' notice); In re Patriot Coal Corp., No. 12-12900 (Bankr. S.D.N.Y. Aug. 16, 2012) (generally authorizing the sale of assets valued less than or equal to \$1.5 million with no advance notice and authorizing sales greater than \$1.5 million but less than or equal to \$5 million on 10 days' notice; generally authorizing the abandonment of assets valued less than or equal to \$1.5 million on five business days' notice); In re Hostess Brands, Inc., No. 12-22052 (Bankr. S.D.N.Y. Feb. 22, 2012) (authorizing the sale of assets valued less than or equal to \$750,000 with no advance notice and authorizing sales greater than \$750,000 but less than or equal to \$4 million on seven business days' notice); In re Lear Corp., No. 09-14326 (Bankr. S.D.N.Y. July 31, 2009) (authorizing the sale of assets valued less than or equal to \$1 million with no advance notice and authorizing sales greater than \$1 million but less than or equal to \$15 million on 15 days' notice; authorizing the abandonment of assets valued less than or equal to \$15 million on 15 days' notice); In re Visteon Corp., No. 09-11786 (Bankr. D. Del. July 19, 2009) (authorizing the sale of assets valued less than or equal to \$500,000 with no advance notice and authorizing sales greater than \$500,000 but less than or equal to \$10 million on five business days' notice; authorizing the abandonment of assets valued less than or equal to \$10 million on five business days' notice); In re Old Carco LLC (f/k/a/ Chrysler LLC), No. 09-50002 (Bankr. S.D.N.Y. June 18, 2009) (authorizing the sale of assets valued less than or equal to \$1 million with no advance notice and authorizing sales greater than \$1 million but less than or equal to \$10 million on 10 business days' notice).



**Request for Waiver of Stay**

48. In addition, by this Motion, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). Pursuant to Bankruptcy Rule 6006(d), "[a]n order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6006(d). The Debtors submit that the imposition of the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) is inconsistent with the streamlined procedures for notice and approval of each individual sale contemplated by this Motion. One of the primary benefits of the proposed Miscellaneous Asset Procedures is the ability to take advantage of market opportunities to consummate sales of Miscellaneous Assets without delay. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d).

**Notice**

49. In accordance with the *Order Establishing Certain Notice, Case Management and Administrative Procedures* (Docket No. 111) (the "Case Management Order"), notice of this Motion has been given to (a) all parties on the Master Service List (as defined in the Case Management Order), (b) any party that has requested notice pursuant to Bankruptcy Rule 2002, (c) the Governmental Authorities and (d) the Sureties. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.



**No Prior Request**

50. No prior request for the relief sought in this Motion has been made to this or any other Court in connection with these chapter 11 cases.

WHEREFORE, the Debtors respectfully request that the Court: (i) enter an order substantially in the form attached hereto as Exhibit A, granting the relief requested herein; and (ii) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: September 1, 2015  
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

PROPOSED ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION



**Exhibit A**

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*)

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)

*Proposed Attorneys for Debtors  
and Debtors in Possession*

**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 ESTABLISHING PROCEDURES FOR  
THE SALE, TRANSFER OR ABANDONMENT OF MISCELLANEOUS  
AND DE MINIMIS ASSETS AND GRANTING CERTAIN RELATED RELIEF**

This matter coming before the Court on the *Motion of the Debtors for an Order Establishing Procedures for the Sale, Transfer or Abandonment of Miscellaneous and De Minimis Assets and Granting Certain Related Relief* (the "Motion"),<sup>1</sup> filed by the above-captioned debtors (collectively, the "Debtors"); the Court having reviewed the Motion and having considered the statements of counsel with respect to the Motion at a hearing before the Court (the "Hearing"); the Court having found that (a) the Court has jurisdiction over this matter

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



pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that (a) the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; (b) a sound business purpose exists to grant the relief requested herein; and (c) there is good cause to waive the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d);

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Miscellaneous Asset Procedures, as set forth in the Motion, are approved, as follows:
  - (a) The Miscellaneous Asset Procedures shall apply only to: (i) the private sale or transfer of Miscellaneous Assets involving, in each case, \$7,500,000 or less in total consideration (the "Sale Cap"), as measured by the amount of cash and other consideration (such as assumption of liabilities) to be received by the Debtors on account of the Miscellaneous Assets to be sold or transferred in any one transaction or in any series of related transactions; (ii) the auction of any Miscellaneous Asset with a book value equal to or less than the Sale Cap; and (iii) the abandonment of Miscellaneous Assets with a book value of \$5,000,000 or less.
  - (b) Other than with respect to De Minimis Assets, after the Debtors obtain any necessary consents required pursuant to the DIP Financing Agreement and enter into a contract or contracts (or bill of sale or other legal document) contemplating a Proposed Sale, the Debtors shall serve a Sale Notice by hand delivery, overnight mail or email on: (i) the United States Trustee for the Eastern District of Virginia (the "U.S. Trustee"); (ii) counsel to the official committee of unsecured creditors appointed in these chapter 11 cases (the "Creditors' Committee"); (iii) Davis Polk & Wardwell LLP and McGuireWoods LLP, as co-counsel to Citibank, N.A., as administrative and collateral agent under the DIP Financing, and Citicorp North America, Inc., as administrative and collateral agent under the Prepetition Credit Agreement; (iv) Kirkland & Ellis LLP, as counsel to the Second Lien Noteholder Group; (v) counsel to the



indenture trustee under the 2015 Notes Indenture; (vi) all other known parties holding or asserting liens on or other interests in the assets that are the subject of the Proposed Sale and their respective counsel (if known); (vii) all counterparties to executory contracts or unexpired leases proposed to be assumed, assumed and assigned, or rejected as part of the Proposed Sale; and (viii) in connection with any sale or transfer of interests in real property, (A) any applicable federal or state (I) permitting or licensing authority, (II) environmental regulatory agency and/or (III) reclamation bonding entity (any such entity, a "Governmental Authority") and (B) any non-Debtor party that has secured, through the issuance of a bond, guaranty or other form of credit support, any obligation of the Debtors with respect to such property (any such party, a "Surety" and, collectively with all parties identified in (i) through (vii) above and the Governmental Authorities, the "Interested Parties"). To the extent that the relevant contract or contracts are not attached to the Sale Notice, the Debtors shall also serve a copy of such contract or contracts on the Interested Parties.

3. With respect to a Proposed Sale that is to be effected by a private sale, the Sale Notice, at a minimum, shall include the following information with respect to the Proposed Sale:

- (a) a description of the assets that are the subject of the Proposed Sale and their location(s);
- (b) the identity of the nondebtor party or parties to the Proposed Sale (the "Transferee(s)"), the service address of the Transferee(s) and any relationships of the Transferee(s) with the Debtors;
- (c) the identities of any parties known to the Debtors to hold liens on or other interests in the assets and a statement indicating that all such liens or interests are capable of monetary satisfaction;
- (d) the major economic terms and conditions of the Proposed Sale, including the amount of cash consideration and the nature, value and, if applicable, method of valuation of any non-cash consideration, as well as any material terms specific to the Proposed Sale;<sup>2</sup>

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<sup>2</sup> This information may be provided (in whole or in part) by attaching the applicable contract or contracts (or other relevant documents) to the Sale Notice. To the extent that the contract or contracts are not attached to the Sale Notice, the Debtors shall also serve a copy of such contract or contracts on the Interested Parties.



- (e) the executory contracts and unexpired leases, if any, that the applicable Debtor or Debtors propose to be assumed, assumed and assigned, or rejected as part of the Proposed Sale;
- (f) for any assumption, or assumption and assignment, of an executory contract or unexpired lease, the amounts required to cure any defaults pursuant to section 365(b) of the Bankruptcy Code (collectively, the "Cure Claims"), and a statement regarding the adequate assurance of future performance by the purchaser or transferee, consistent with section 365 of the Bankruptcy Code;
- (g) an affidavit of the broker, if any, pursuant to Bankruptcy Rule 2014, that identifies the broker and the amount of the Commission, and that contains the disclosures required by Bankruptcy Rule 2014; and
- (h) instructions consistent with the terms described below regarding the procedures to assert objections to the Proposed Sale ("Objections").

4. With respect to a Proposed Sale to be effected by auction, the Sale Notice, at a minimum, shall include the following information with respect to the Proposed Sale:

- (a) a description of the assets that are the subject of the Proposed Sale and their location(s);
- (b) the identities of any parties known to the Debtors to hold liens on or other interests in the assets and a statement indicating that all such liens or interests are capable of monetary satisfaction;
- (c) the executory contracts and unexpired leases, if any, that the applicable Debtor or Debtors propose to be assumed, assumed and assigned, or rejected as part of the Proposed Sale;
- (d) for any assumption, or assumption and assignment, of an executory contract or unexpired lease, the amounts of any Cure Claims;
- (e) the date, time and place of the auction;
- (f) the minimum acceptable bid (the "Minimum Bid");
- (g) any terms and conditions of sale to be imposed at the auction;
- (h) a copy of any documentation executed in contemplation of the Proposed Sale (e.g., a proposed form of purchase agreement);



- (i) an affidavit of a third party auctioneer, if any, pursuant to Bankruptcy Rule 2014, that identifies the auctioneer and the amount of the Commission, and that contains the disclosures required by Bankruptcy Rule 2014; and
- (j) instructions regarding the procedures to assert Objections.

5. With respect to any Proposed Abandonment, the Debtors will serve a notice (an "Abandonment Notice") by hand delivery, overnight mail or email on the Interested Parties. The Abandonment Notice will specify: (a) the Miscellaneous Assets to be abandoned; (b) a summary of the justifications for the abandonment; (c) the identities of any parties known to hold or assert liens or other interests in the relevant Miscellaneous Assets; (d) if applicable, the identity of the entity to which the Miscellaneous Assets will be abandoned; and (e) in connection with the abandonment of any interest in real property, a statement that neither any environmental condition related to such property nor the abandonment thereof presents any threat of an imminent and identifiable harm to public health and safety.

6. Interested Parties shall have five business days after the date of service of the Sale Notice or Abandonment Notice, as applicable (the "Notice Period"), to object, pursuant to the objection procedures described below, to (a) the Proposed Sale and the payment of any Commissions, (b) the Proposed Abandonment or (c) any related assumptions, assignments and rejections of executory contracts or unexpired leases. If (a) no Objections are properly asserted prior to expiration of the Notice Period and (b) the Debtors have obtained any requisite consent required pursuant to the DIP Financing Agreement in connection with the Proposed Sale or the Proposed Abandonment, the applicable Debtor or Debtors are authorized, without further notice and without further Court approval, to: (a)(i) either (A) for Miscellaneous Assets to be sold by private sale, consummate the Proposed Sale in accordance with the terms and conditions of the underlying contract or contracts or (B) for Miscellaneous Assets to be sold



at auction, conduct the auction and sell the assets at the auction, provided, however, that no sale at an auction may be completed for consideration below the Minimum Bid identified in the applicable Sale Notice;<sup>3</sup> and (ii) take such other actions as are necessary to close the transaction and collect the proceeds of such sale, including, without limitation, payment of any Commissions, and assumption, assumption and assignment, or rejection of the executory contracts and unexpired leases described in the Sale Notice and payment of the Cure Claims proposed in such notice; or (b) proceed with the Proposed Abandonment, including the rejection of any related executory contracts and unexpired leases. In addition, the applicable Debtor or Debtors may consummate a Proposed Sale or Proposed Abandonment prior to expiration of the applicable Notice Period if each Interested Party consents in writing to the Proposed Sale or Proposed Abandonment.

7. A Proposed Sale, including the assumption, assumption and assignment, or rejection of executory contracts and unexpired leases proposed in connection with the sale, will be deemed fully authorized by the Court upon either (a) for a private sale, (i) the expiration of the Notice Period without the assertion of any Objections or (ii) the written consent of all Interested Parties; or (b) for a sale by auction, (i) the expiration of the Notice Period without the assertion of any Objections or the written consent of all Interested Parties and (ii) the Debtors' acceptance of a qualifying bid in excess of the Minimum Bid at the auction.

8. If a sale transaction is completed at an auction, the Debtors shall file with the Court and serve upon the Interested Parties a report of the results of the auction within 10 days after the conclusion of the auction.

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<sup>3</sup> If no Interested Party files an Objection to the Minimum Bid proposed for an auction, or any such Objections are resolved so that the auction may proceed, the Debtors may sell the applicable Miscellaneous Asset at the auction for any price above the Minimum Bid, even if the sale price exceeds the Sale Cap.



9. If any significant economic terms of a Proposed Sale are amended after transmittal of the Sale Notice, but prior to the expiration of the Notice Period (including as part of the resolution of any Objections), the applicable Debtor or Debtors shall send a revised Sale Notice to all Interested Parties describing the Proposed Sale, as amended. If a revised Sale Notice is required, the Notice Period shall be extended for an additional five business days from the date of service of the revised Sale Notice.

10. Any Objections to a Proposed Sale or a Proposed Abandonment must be in writing and served on the Interested Parties so as to be received by all such parties prior to expiration of the Notice Period. Each Objection must state with specificity the grounds for objection.

11. If an Objection is properly served, the Proposed Sale or the Proposed Abandonment may not proceed absent (a) written withdrawal of the Objection, (b) entry of an order of the Court specifically approving the Proposed Sale or the Proposed Abandonment or (c) the submission of a Consent Order in accordance with the procedures described below.

12. Any Objections may be resolved without a hearing by an order of the Court submitted on a consensual basis by the applicable Debtor or Debtors, any Transferee(s) and the objecting party (a "Consent Order"); provided, however, that if any significant economic terms of a Proposed Sale are modified by the Consent Order, the applicable Debtor or Debtors shall: (a) prior to submission to the Court of the Consent Order, provide the Interested Parties with five business days' notice of the Consent Order and an opportunity to object to the terms thereof by transmitting a written statement of objection to the Debtors' counsel; and (b) with the Consent Order, provide the Court with a written certification that (i) such prior notice was given and (ii) no Interested Party timely asserted an objection to the Consent Order. If the Debtors are



unable to resolve an Objection on a consensual basis, the applicable Debtor or Debtors may schedule the Proposed Sale or the Proposed Abandonment and the Objection for hearing at the next available omnibus hearing date in these chapter 11 cases by giving at least five business days' written notice of the hearing to any objecting party and any Transferee(s).

13. If a holder of a lien, claim or encumbrance receives a Sale Notice and does not object within the prescribed time period, such holder shall be deemed to have consented to the Proposed Sale.

14. Notwithstanding the notice procedures described above (the "Notice Procedures"), for (a) any transaction involving the private sale or transfer of a Miscellaneous Asset for less than \$2,000,000 in total consideration, as measured by the amount of cash and other consideration (such as assumption of liabilities) to be received by the Debtors on account of the Miscellaneous Assets to be sold or transferred in any one transaction or in any series of related transactions (a "De Minimis Private Sale"); (b) the auction of any Miscellaneous Asset with a book value equal to or less than \$2,000,000 (together with any De Minimis Private Sale, a "De Minimis Sale"); or (c) the abandonment of any non-real estate asset with a book value of less than \$1,000,000 (a "De Minimis Abandonment"),<sup>4</sup> the applicable Debtor or Debtors will be authorized, without following the Notice Procedures and without further notice and further Court approval, to consummate the De Minimis Sale or De Minimis Abandonment and such De Minimis Sales or De Minimis Abandonments will be deemed fully authorized by the Court, provided that the Debtors have obtained any necessary consents required pursuant to the DIP

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<sup>4</sup> Any real property subject to oversight by a Governmental Authority (e.g., pursuant to an environmental order issued by a Governmental Authority) may be abandoned only pursuant to the Notice Procedures or by separate motion of the Debtors. Within 20 days after the end of any calendar month in which one or more De Minimis Abandonments is effected, the Debtors shall file a written report on the docket listing such De Minimis Abandonment(s) and the effective date(s) thereof.



Financing Agreement in connection with such De Minimis Sale or De Minimis Abandonment. Although notice or hearing will not be required for the Debtors to consummate a De Minimis Sale or a De Minimis Abandonment, the Debtors, at their discretion, (a) may use the Notice Procedures for any such sale or abandonment and (b) shall use the Notice Procedures in connection with any De Minimis Sale or De Minimis Abandonment involving the assumption, assumption and assignment, or rejection of an executory contract or unexpired lease.

15. Buyers of the assets sold pursuant to this Order will take title to such assets free and clear of liens, claims, encumbrances and other interests under section 363(f) of the Bankruptcy Code. All such liens, claims, encumbrances and other interests will attach to the proceeds of the sale to the extent applicable state law or any relevant security agreement (or both) provide for the continuation of such liens, claims, encumbrances and other interests, with the same validity and priority as with respect to the assets.

16. Upon the closing of a sale or transfer pursuant to this order, the Debtors may assume, assume and assign, or reject any executory contract or unexpired lease and pay any related Cure Claims. The nondebtor parties to any executory contracts or unexpired leases are hereby barred from asserting any further Cure Claims in respect of such executory contracts or unexpired leases after the objection period for a Proposed Sale has expired.

17. With respect to executory contracts to be assumed, or assumed and assigned, as part of any transaction under the Miscellaneous Asset Procedures and this Order, any adequate assurance of future performance shall be provided, and any Cure Claims paid, consistent with section 365 of the Bankruptcy Code. To the extent that any Cure Claims are payable in connection with a transaction under the Miscellaneous Asset Procedures, such Cure Amounts shall (a) not count against the Sale Cap to the extent paid by the purchaser of assets and



(b) to the extent paid by the Debtors, be deducted from the total consideration received by the Debtors to be applied against the Sale Cap.

18. Sales or transfers of Miscellaneous Assets pursuant to the terms of this Order shall be deemed arm's length transactions and buyers shall be entitled to the protections of section 363(m) of the Bankruptcy Code.

19. The Debtors hereby are authorized to pay, without further Court approval, Commissions for brokers and auctioneers utilized in connection with any sales of Miscellaneous Assets upon satisfaction of the disclosure requirements provided herein.

20. Each and every federal, state and local government agency or department is hereby directed to accept any and all documents and instruments necessary or appropriate to consummate the disposition of Miscellaneous Assets. The register or recorder of deeds (or other similar recording agency) is hereby directed to accept and include a certified copy of this Order along with any other appropriate conveyance documents used to record and index the transfer of any Miscellaneous Assets in the appropriate public records.

21. Any net proceeds obtained by the Debtors from any sales of Miscellaneous Assets shall be applied as required by the DIP Financing Agreement or any order entered by the Court. Nothing contained herein shall be deemed a waiver by the DIP Lenders of any required approval or disapproval of any sale, whether pursuant to this Order or otherwise.

22. The liens of all other holders of valid and perfected liens shall be treated in accordance with section 363(f) of the Bankruptcy Code.

23. The Debtors shall provide, to the extent practicable, a written report or reports, within 20 days after the end of each calendar month concerning any such sales, transfers or abandonments made pursuant to the terms of this Order (including the names of the



purchasing parties and the types and amounts of the sales or abandonments) to the U.S. Trustee and counsel to the Creditors' Committee; provided, however, that no such report need be provided for any month where there are no such sales, transfers or abandonments.

24. The 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) is hereby waived with respect to each Proposed Sale and Proposed Abandonment conducted in accordance with this Order, and the Debtors may close Proposed Sales as set forth herein without reference to such stay.

25. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is hereby waived to the extent necessary.

26. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

27. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: \_\_\_\_\_, 2015  
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

*Proposed Counsel to 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





JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
Telephone: (216) 586-3939  
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Richmond, Virginia 23219  
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Henry P. (Toby) Long, III (VSB No. 75134)  
Justin F. Paget (VSB No. 77949)

*Proposed Attorneys for Debtors  
and Debtors in Possession*

**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 APPLICATIONS AND RELATED HEARING**

**PLEASE TAKE NOTICE** that, on September 1, 2015, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the following pleadings (collectively, the "Filings") with the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the "Court"):

- (a) *Motion of the Debtors for an Order Establishing Procedures for the Sale, Transfer or Abandonment of Miscellaneous and De Minimis Assets and Granting Certain Related Relief;*
- (b) *Application of the Debtors, Pursuant to Sections 327(a), 328(a) and 1107(b) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Bankruptcy Rule 2014-1, for an Order Authorizing Them to Retain and Employ KPMG LLP as Auditor, Effective as of the Petition Date; and*
- (c) *Application of the Debtors, Pursuant to Sections 327(e) and 329(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016(b) and Local Bankruptcy Rules 2014-1 and 2016-1, for an Order Authorizing Them to Retain and Employ Jackson Kelly PLLC as Special Counsel, Effective as of the Petition Date.*



**PLEASE TAKE FURTHER NOTICE** that a copy of each of the Filings may be obtained at no charge at [www.kccllc.net/alpharestructuring](http://www.kccllc.net/alpharestructuring) or for a fee at <https://ecf.vaeb.uscourts.gov>.

**PLEASE TAKE FURTHER NOTICE** that your rights may be affected. You should read the Filings carefully and discuss them with your attorney, if you have one in the chapter 11 cases. (If you do not have an attorney, you may wish to consult one).

**PLEASE TAKE FURTHER NOTICE** on August 5, 2015, the Court entered the *Order Establishing Certain Notice, Case Management and Administrative Procedures* (Docket No. 111) (the "Case Management Order"), which approved certain notice, case management and administrative procedures attached thereto as Schedule 1 (the "Case Management Procedures"). The Case Management Procedures, among other things, prescribe the manner in which Objections must be filed and served and set forth when certain hearings will be conducted. A copy of the Case Management Order may be obtained at no charge at [www.kccllc.net/alpharestructuring](http://www.kccllc.net/alpharestructuring) or for a fee at <https://ecf.vaeb.uscourts.gov>.

**PLEASE TAKE FURTHER NOTICE** if you do not want the Court to grant the relief requested in the Filings, or if you want the Court to consider your views on the Filings, then, by **September 11, 2015** (the "Response Deadline"), you or your attorney must:

- File with the Court, either electronically or at the address shown below, a written response to the applicable Filing pursuant to Rule 9013-1(H) of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia and the Case Management Procedures. If you mail your written response to the Court for filing, you must mail it early enough so the Court will receive it on or before the Response Deadline.

**If a response is not properly and timely filed and served, the Court may deem any opposition waived, treat the Filings as conceded and enter appropriate orders granting the requested relief without further notice or hearing.**

Clerk of the Court  
United States Bankruptcy Court  
701 East Broad Street  
Suite 4000  
Richmond, VA 23219

In accordance with the Case Management Procedures, you must also serve a copy of your written response on the parties to the Master Service List and the 2002 List and any Affected Entity (as such terms are defined in the Case Management Order) so that the response is received on or before the Response Deadline.



- Attend a hearing before the Honorable Kevin R. Huennekens, United States Bankruptcy Judge, at 2:00 p.m. (prevailing Eastern Time) on September 15, 2015, at the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, 701 East Broad Street, Room 5000, Richmond, Virginia 23219.

**PLEASE TAKE FURTHER NOTICE THAT** you should consult the Case Management Procedures before filing any written response.

Dated: September 1, 2015  
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)  
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PROPOSED ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

