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Attorneys for Debtors and Debtors in Possession

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

In re:	Chapter 11
Alpha Natural Resources, Inc., et al.,	Case No. 15-33896 (KRH)
Debtors.	(Jointly Administered)

SECOND OMNIBUS MOTION FOR AN ORDER AUTHORIZING THE REJECTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES

PARTIES RECEIVING THIS OMNIBUS MOTION SHOULD LOCATE THEIR NAMES AND THEIR LEASES OR CONTRACTS ON EXHIBIT 1 TO THE PROPOSED ORDER ATTACHED HERETO AS EXHIBIT A

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 and 365 of the Bankruptcy Code and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors hereby seek the entry of an order, substantially in the form attached hereto as Exhibit A (the "Proposed Order"), authorizing them to reject the executory contracts and unexpired leases identified on the schedule attached as Exhibit 1 to the Proposed Order (collectively, the "Agreements").[1]

[1] The term "Agreements" includes any modifications, amendments, addenda or supplements thereto or restatements thereof. With respect to each Agreement, Exhibit A sets forth, among other things, the applicable counterparty (each, a "Counterparty") and the requested effective date of rejection (the "Rejection Effective Date").

Facts Relevant to This Motion

5. Prior to the Petition Date and throughout these chapter 11 cases, the Debtors have engaged in a review of their executory contracts and unexpired leases to identify those contracts and leases that, in the Debtors' business judgment, are not necessary to their ongoing business operations or restructuring efforts. As a result of their review to date, the Debtors have determined that the Agreements set forth on Exhibit 1 to the Proposed Order are not necessary to their ongoing business operations or restructuring efforts, and that the Debtors' burdens under each of the Agreements exceed any benefits to the Debtors thereunder. The Debtors further believe, in their business judgment, that they could not assume and assign the Agreements in a manner that would provide any economic benefit to the Debtors' estates.

6. Each of the Agreements is an "executory contract" or "unexpired lease" within the meaning of section 365 of the Bankruptcy Code, capable of being rejected by the Debtors. To the extent that any Agreement already has expired or been terminated, it is included herein out of an abundance of caution.

Argument

Rejection of the Agreements Is an Appropriate Exercise of the Debtors' Business Judgment and Should Be Authorized

7. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease." 11 U.S.C. § 365(a). Courts routinely approve motions to assume, assume and assign, or reject executory contracts or unexpired leases upon a showing that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. 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.").

8. Courts generally will not second-guess a debtor's business judgment concerning the assumption or rejection of an executory contract or unexpired lease unless there is a showing of bad faith or gross abuse of discretion. See Richmond Metal Finishers, 756 F.2d at 1047 ("[T]he rule as applied to a bankrupt's decision to reject an executory contract because of perceived business advantage requires that the decision be accepted by courts unless it is shown that the bankrupt's decision was one taken in bad faith or in gross abuse of the bankrupt's retained business discretion."); Circuit City Stores, 2010 WL 4735821, at *3 (same; noting the "firmly established" nature of the rule articulated by the Fourth Circuit in Richmond Metal

Finishers); see also In re Trans World Airlines, Inc., 261 B.R. 103, 121 (Bankr. D. Del. 2001) ("A debtor's decision to reject an executory contract must be summarily affirmed unless it is the product of bad faith, or whim or caprice.") (citation and internal quotation marks omitted).

9. The "business judgment" test is not a strict standard; it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor's estate. See NLRB v. Bildisco & Bildisco (In re Bildisco), 682 F.2d 72, 79 (3d Cir. 1982) (noting that the "usual test for rejection of an executory contract is simply whether rejection would benefit the estate"), aff'd, 465 U.S. 513 (1984). Further, "[s]ection 365 enables the trustee to maximize the value of the debtor's estate by assuming executory contracts and unexpired leases that benefit the estate and rejecting those that do not." L.R.S.C. Co. v. Rickel Home Ctrs., Inc. (In re Rickel Home Ctrs., Inc.), 209 F.3d 291, 298 (3d Cir. 2000); see also Stewart Title Guar. Co. v. Old Republic Nat'l Title Ins. Co., 83 F.3d 735, 741 (5th Cir. 1996) (section 365 of the Bankruptcy Code "allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed").

10. Because the Agreements are not necessary to the Debtors' ongoing business operations or restructuring efforts, the Debtors' ongoing obligations under the Agreements impose an undue burden on their estates. The Debtors believe that maintaining the Agreements under these circumstances would unnecessarily deplete the assets of the Debtors' estates to the direct detriment of their creditors. Moreover, the Debtors have determined that the Agreements do not have any realizable value in the marketplace. Accordingly, in the sound exercise of their business judgment, the Debtors have determined that the rejection of the Agreements, pursuant to section 365 of the Bankruptcy Code, effective as of the Rejection Effective Date for each Agreement, is in the best interests of their estates.

Notice

11. 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 and (c) the Counterparties. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

No Prior Request

12. 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: November 3, 2015
Richmond, Virginia

Respectfully submitted,

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

Tyler P. Brown (VSB No. 28072)
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ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

Exhibit A

Proposed Order

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

In re:	Chapter 11
Alpha Natural Resources, Inc., et al.,	Case No. 15-33896 (KRH)
Debtors.	(Jointly Administered)

SECOND ORDER AUTHORIZING THE REJECTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES

This matter coming before the Court on the *Second Omnibus Motion for an Order Authorizing the Rejection of Certain Executory Contracts and Unexpired Leases* (the "Motion"),[1] filed by the above-captioned debtors and debtors in possession (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 pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b) and (c) notice of the Motion and the Hearing was sufficient under the circumstances; the Court having determined that the legal and factual bases

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

set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having determined that rejection of the Agreements is an appropriate exercise of the Debtors' business judgment;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The Debtors are authorized to reject the executory contracts and unexpired leases (collectively, the "Agreements") identified on Exhibit 1 hereto, effective as of the date hereof.

3. Within two business days after the entry of this Order, counsel to the Debtors shall serve a copy of this Order on each of the Counterparties.

4. 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.

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

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

Dated: _____, 2015
Richmond, Virginia

_____
UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

Respectfully submitted,

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

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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

Exhibit 1

Schedule of Agreements to be Rejected

AGREEMENTS TO BE REJECTED

NAME AND ADDRESS OF COUNTERPARTIES	DESCRIPTION OF LEASE/CONTRACT	DEBTOR PARTY	REJECTION EFFECTIVE DATE
AEP River Operations LLC 16150 Main Circle Drive, Suite 400 Chesterfield, Missouri 63017-4689	Freight Contract dated March 1, 2010 (as amended)	Appalachia Coal Sales Company, Inc. f/k/a Massey Coal Sales Company	Upon entry of the *Second Order Authorizing the Rejection of Certain Executory Contracts and Unexpired Leases* (the "Order")
Capital IQ, Inc. 55 Water St., 49th Floor New York, New York 10041	License Agreement dated August 18, 2010	Alpha Natural Resources, Inc.	Upon entry of the Order
Columbia Gas Transmission Corporation 5151 San Felipe, Suite 2500 Houston, Texas 77056	Agreement dated December 3, 1987	Emerald Coal Resources as successor in interest to Cyprus Emerald Resources Corporation	Upon entry of the Order
Columbia Gas Transmission, LLC 5151 San Felipe, Suite 2500 Houston, Texas 77056	Firm Transportation Service Agreement dated June 29, 2015	New River Energy Corporation	Upon entry of the Order
Employment Law Training, Inc. 160 Pine Street, Suite 200 San Francisco, California 94111	License Agreement dated July 25, 2005	Alpha Natural Resources, Inc.	Upon entry of the Order
Kenexa Compensation, Inc. 343 Winter Street Waltham, Massachusetts 02451	Master Subscription Agreement dated July 1, 2011	Alpha Natural Resources, Inc.	Upon entry of the Order
Monster Worldwide, Inc. 5 Clock Tower Place, Suite 500 Maynard, Massachusetts 01754	Undated Monster Services Agreement	Alpha Natural Resources LLC	Upon entry of the Order

NAME AND ADDRESS OF COUNTERPARTIES	DESCRIPTION OF LEASE/CONTRACT	DEBTOR PARTY	REJECTION EFFECTIVE DATE
Zuckerman Spaeder LLP 1800 M Street, NE, Suite 1000 Washington, D.C. 20036-5807 and Donald L. Blankenship P.O. Box 927 Belfry, Kentucky 41514 and Donald L. Blankenship c/o Landis Rath & Cobb LLP 919 Market Street, Suite 1800 Wilmington, Delaware 19801	Engagement Letter for Legal Services dated June 1, 2010	Alpha Appalachia Holdings, Inc. f/k/a Massey Energy Company	Upon entry of the Order
Sandra L. Davis P.O. Box 23 Red Jacket, West Virginia 25692	Employment Agreement dated January 28, 2011	Alpha Appalachia Services, Inc. f/k/a Massey Coal Services, Inc.	Upon entry of the Order
De Lage Landen Financial Services, Inc.	Equipment Lease (Konica Minolta Bizhub Copiers) dated January 15, 2015	Rockspring Development, Inc.	Upon entry of the Order
Komax Business Systems	Maintenance Agreement dated December 31, 2014	Rockspring Development, Inc.	Upon entry of the Order