

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:

NORANDA ALUMINUM, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 16-____(____)

(Joint Administration Requested)

Hearing Date & Time:
February 9, 2016 at 2:00 p.m.
(prevailing Central Time)

Hearing Location:
St. Louis Courtroom 5 North

**DEBTORS' MOTION FOR AN ORDER
PURSUANT TO SECTIONS 105, 363, 503(b)(9) AND 507(a)(2)
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003
AND 6004, (I) AUTHORIZING THE DEBTORS TO PAY PREPETITION
CLAIMS OF CERTAIN CRITICAL VENDORS AND (II) DIRECTING FINANCIAL
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Noranda Aluminum, Inc. and its affiliated debtors and debtors in possession in the above-captioned cases (each a "Debtor," and, collectively, the "Debtors"), hereby move this Court for entry of an order substantially in the form attached hereto as Exhibit A (the "Proposed Order"), pursuant to sections 105, 363, 503(b)(9) and 507(a)(2) of title 11 of the United States Code (the "Bankruptcy Code"), and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) authorizing the Debtors to pay, in their sole discretion, the prepetition claims of certain critical vendors and suppliers, and (ii) directing financial

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: Noranda Aluminum, Inc. (Del.; 5285), Gramercy Alumina Holdings Inc. (Del.; 1941), Gramercy Alumina Holdings II, Inc. (Del.; 2806), NHB Capital, LLC (Del.; 0777), Noranda Alumina LLC (Del.; 4769), Noranda Aluminum Acquisition Corp. (Del.; 8458), Noranda Aluminum Holding Corp. (Del.; 8550), Noranda Bauxite Ltd. (Jamaica), Noranda Bauxite Holdings Ltd. (St. Lucia), Noranda Intermediate Holding Corp. (Del.; 3238) and Norandal USA, Inc. (Del.; 6477). The address of the Debtors' corporate headquarters is 801 Crescent Centre Drive, Suite 600, Franklin, Tennessee 37067.

institutions to honor and process related checks and electronic transfers. In support of this motion (the “Motion”), the Debtors rely upon the Declaration of Dale W. Boyles in Support of Chapter 11 Petitions and Various First Day Applications and Motions (the “First Day Declaration”)² and respectfully state as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to hear the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. The statutory and legal predicates for the relief requested herein are sections 105, 363, 503(b)(9) and 507(a)(2) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

Background

3. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code thereby commencing the instant cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee, examiner or official committee has been appointed in the Chapter 11 Cases.

5. Information regarding the Debtors’ businesses, their capital and debt structure, and the events leading to the filing of the Chapter 11 Cases is contained in the First Day Declaration.

² The First Day Declaration is being filed contemporaneously with this Motion and is incorporated herein by reference. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the First Day Declaration.

The Debtors' Critical Vendors and Service Providers

6. As described in detail in the First Day Declaration, the Debtors are one of the country's largest integrated producers of value-added primary aluminum and high-quality rolled aluminum coils, and operate through two business lines: the Upstream Business and Downstream Business. The Debtors' Upstream Business is one of the largest U.S. producers of primary aluminum, and consists of three separate segments: (1) the Debtors' bauxite mining operation in St. Ann, Jamaica; (2) the Debtors' alumina refinery in Gramercy, Louisiana; and (3) the Debtors' primary aluminum smelter in New Madrid, Missouri where, 2015, the Debtors produced approximately 498 million pounds of primary aluminum.

7. The Downstream Business consists of manufacturing of finstock and semi-rigid container stock, light gauge converter foils used for packaging applications, consumer foils and light gauge sheet products such as transformer windings and building products. The Debtors then sell such products to third party original equipment manufacturers. To operate their Downstream Business, the Debtors mainly purchase primary aluminum from third parties, with a minority of the Downstream Businesses' primary aluminum requirements being satisfied by their New Madrid facility.

8. To maintain the integrity of the Debtors' vertically integrated Upstream and Downstream Businesses, the Debtors utilize a network of vendors that provide essential materials used in refining bauxite into alumina, manufacturing primary aluminum, or manufacturing aluminum products. The Debtors also utilize a sophisticated intra-segment shipping and supply network to ensure their manufacturing plants are operating as efficiently as possible. The Debtors believe these efforts garner significant competitive advantages in the highly competitive markets in which they operate.

9. In preparation for the commencement of these Chapter 11 Cases, the Debtors, with the assistance of their advisors, carefully examined all aspects of the Debtors' operations—and, in particular, their vendor relationships—to determine how best to ameliorate the adverse impact of these Chapter 11 Cases on the Debtors' business operations and their trade credit terms postpetition. Specifically, the Debtors undertook a thorough review of their accounts payable and their list of prepetition vendors and service providers, and worked with business leaders for each of their divisions and departments to identify those parties who are most essential to the Debtors' operations. In evaluating these vendors and service providers, the Debtors considered, among other things, (a) whether the vendor in question is a "sole-source" or "limited source" provider, (b) what the overall impact on the Debtors' revenue and operations would be if the particular vendor ceased or delayed shipments or services, and (c) whether payment would ameliorate immediate and irreparable harm to the Debtors' business operations, particularly with respect to certain long term strategic partnerships or other key relationships.

10. The Debtors identified vendors that provide essential materials and services, the loss of which would harm the Debtors' businesses (collectively, the "Critical Vendors"). In many instances, the Critical Vendors are the sole source of essential materials or services. Generally, the Debtors' relationships with the Critical Vendors start with purchase orders for goods or services. Thus, most of the Debtors' relationships with their Critical Vendors are predicated on purchase orders, invoices or work orders for goods and services received, and there are typically no underlying contracts between the Debtors and the Critical Vendors that the Debtors may assume through the bankruptcy process.³

³ The Debtors also evaluated the financial and operational prospects of their suppliers that are parties to enforceable contracts to identify those suppliers whose financial or operational position is so precarious that if the Debtors' prepetition obligations are not paid, the suppliers' businesses would most likely fail.

11. Without payment of the Critical Vendor Claims, it is likely that some or many of the Critical Vendors will refuse or be unable to continue providing essential materials and services to the Debtors. Additionally, in certain instances, simply the process of finding replacement vendors for essential materials or services would be incredibly value-destructive to the Debtors' businesses, in light of the critical importance that the Debtors' facilities remain in continuous operation. Virtually any impairment or delay in the supply of essential materials and services would cause immediate and irreparable harm to the Debtors' businesses.

12. The Debtors estimated the total payments that would be necessary to ensure the continued supply of critical goods and services from the Critical Vendors if such parties refused to extend trade terms postpetition without such payment. For the reasons described below, the Debtors believe that the cessation of deliveries or services by any of the Critical Vendors would have an immediate adverse impact on the Debtors' businesses and cause irreparable harm.

Relief Requested

13. By this Motion, the Debtors request entry of an order, substantially in the form attached hereto as Exhibit A, pursuant to sections 105, 363, 503(b)(9), and 507(a)(2) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, authorizing the Debtors to pay, in their discretion and upon entry of the Proposed Order, up to an aggregate amount of \$8.1 million (the "Claims Cap") on account of the claims of Critical Vendors (the "Vendor Claims").⁴

⁴ Through this Motion, the Debtors are seeking authority to pay certain claims that may otherwise be categorized as 503(b)(9) Claims, as defined by the *Motion of the Debtors for an Order Establishing Procedures to Resolve Claims Arising Under Section 503(b)(9) of the Bankruptcy Code* (the "Reclamation Procedures Motion"), filed contemporaneously herewith. No claim paid pursuant to this Motion will be entitled to any duplicative recovery under the Reclamation Procedures Motion.

14. The Claims Cap represents only about 10% of the total amount of prepetition vendor claims in these cases, and it constitutes the Debtors' best estimate of how much must be paid to the Critical Vendors to ensure that the Debtors' business is not unnecessarily interrupted. The Debtors submit the Claims Cap is within the range approved by courts in other cases in this and other Districts. *See, e.g., In re Arch Coal Inc.*, No. 16-40120 (CER) (Bankr. E.D. Mo. Jan. 13, 2016) (authorizing payment of up to \$5 million in critical vendor claims); *In re Walter Energy, Inc.*, No. 15-02741-(TOM) (Bankr. N.D. Ala. Sept. 4, 2015) (order authorizing debtors to pay up to \$8.2 million in critical vendor claims); *In re Alpha Natural Res., Inc.*, No. 15-33896 (KRH) (Bankr. E.D. Va. Sept. 3, 2015) (order authorizing debtors to pay up to \$44.5 million in critical vendor claims); *In re Patriot Coal Corp.*, No. 15-32450 (KLP) (Bankr. E.D. Va. June 4, 2015) (order authorizing debtors to pay up to \$22 million in critical vendor claims); *In re Magnetation LLC*, No. 15-50307 (GFK) (Bankr. D. Minn. May 7, 2015) (order authorizing debtors to pay up to \$27.5 million in critical vendor claims); *In re Patriot Coal Corp.*, No. 12-12900 (SCC) (Bankr. S.D.N.Y. Aug. 2, 2012) (order authorizing debtors to pay up to \$25 million in critical vendor claims).

15. Additionally, the Debtors propose to condition the payment of Vendor Claims on the agreement of the individual Critical Vendor to continue supplying goods and/or services to the Debtors on terms that are consistent with the historical trade terms between the parties (the "Customary Trade Terms"). However, the Debtors reserve the right to negotiate different trade terms with any Critical Vendor, as a condition to payment of any Vendor Claim, to the extent the Debtors determine that such trade terms are (i) necessary to procure essential goods and/or services or (ii) otherwise in the best interests of the Debtors' estates.

16. The Debtors propose that a letter be sent to the Critical Vendors, along with a copy of the Proposed Order, that sets forth the following information and terms:

- (a) The amount of such Vendor Claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for purposes of the Proposed Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);
- (b) The Critical Vendor's agreement to be bound by the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), which were favorable to the Debtors and in effect between such Critical Vendor and the Debtors on a historical basis for the period within one-hundred twenty (120) days of the Petition Date, or such other trade terms as mutually agreed to by the Debtors and such Critical Vendor;
- (c) The Critical Vendor's agreement to provide goods and/or services to the Debtors based upon Customary Trade Terms, and the Debtors' agreement to pay the Critical Vendor in accordance with such terms;
- (d) The Critical Vendor's agreement not to file or otherwise assert against any of the Debtors, their estates or any of their respective assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from goods and/or services provided to the Debtors prior to the Petition Date, and that, to the extent the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- (e) The Critical Vendor's acknowledgment that it has reviewed the terms and provisions of the Proposed Order, and consents to be bound thereby;

- (f) The Critical Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and
- (g) The Critical Vendor's agreement that it has received payment of a prepetition claim, but if it subsequently refuses to supply goods and/or services to the Debtors on Customary Trade Terms, any payments received by the Critical Vendor on account of its claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtors any payments received on account of its claim to the extent the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of setoff or reclamation.

17. Such a letter, once agreed to and accepted by a Critical Vendor, shall be the agreement between the parties that governs their postpetition trade relationship (the "Trade Agreement"). The Debtors hereby seek authority to enter into Trade Agreements with the Critical Vendors to the extent that the Debtors determine, in their discretion, that such an agreement is necessary to their postpetition operations. In the event the Debtors do not or are unable to enter into a Trade Agreement with any Critical Vendor, however, the Debtors nevertheless seek authority to pay such Vendor Claim if the Debtors determine, in their sole discretion, that such payment is necessary to prevent irreparable harm to the Debtors' business operations.

18. For those Critical Vendors who have agreed to provide goods and/or services to the Debtors on terms different from their Customary Trade Terms, the Debtors reserve the right to seek written acknowledgment of such terms on a case-by-case basis.

19. If a Critical Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms following payment of its Vendor Claim, or fails to comply with any Trade Agreement it entered into with the Debtors, the Debtors hereby seek authority to, in their

discretion and without further order of the Court, (i) declare that any Trade Agreement between the Debtors and such vendor is terminated (if applicable), and (ii) declare that any payments made to such vendor on account of its Vendor Claim, whether pursuant to a Trade Agreement or otherwise, be deemed to have been in payment of then-outstanding Vendor Claim without further order of the Court.

20. In the event the Debtors exercise either of the rights set forth in the preceding paragraph, the Debtors request that the Critical Vendor against which the Debtors exercise such rights be required to immediately return to the Debtors any payments made on account of its claim to the extent such payments exceed the postpetition amounts then owed to such vendor, without giving effect to any rights of setoff or reclamation. In essence, the Debtors seek to return the parties to their respective positions immediately prior to entry of the Order in the event a Trade Agreement is terminated or a Critical Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms following payment of its Vendor Claim.

Basis For Relief

21. The goods and services provided by the Critical Vendors are vital to the Debtors' ongoing operations, specifically, to their ability to receive material from their vendors, and to ship material and supplies between their segments and to their customers on a timely and uninterrupted basis. If the relief requested herein is not granted, the Critical Vendors may refuse to provide goods or services, causing immediate harm to the Debtors and their estates. For this reason, the Debtors believe that, in the exercise of their sound business judgment, payment of the Vendor Claims as set forth herein is necessary and appropriate under the circumstances.

22. The relief requested herein may be granted by the Court under the Court's general equitable powers as codified in section 105(a) of the Bankruptcy Code. This section

empowers the Court to “issue any order, process, or judgment that is necessary to carry out the provisions of this [the Bankruptcy Code].” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (citing *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984)). Under section 105(a), a court “can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (“To invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is critical to the debtor’s reorganization.”) (internal quotation omitted).

23. The Court’s power to utilize the “doctrine of necessity” in chapter 11 cases derives from the Court’s inherent equity powers and its statutory authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). *See, e.g., In re Carlson*, 126 F.3d 915, 920 (7th Cir. 1997) (“Section 105(a) gives the bankruptcy court the authority to issue any order necessary to carry out the provisions of the Bankruptcy Code.”); *In re Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); *In re NWFx, Inc.*, 864 F.2d 588, 590 (8th Cir. 1988) (“The overriding consideration in bankruptcy, however, is that equitable principles govern . . .”). The United States Supreme Court first articulated the doctrine of necessity more than a century ago, in *Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286 (1882), in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors and suppliers, among others, when such payments were necessary to

preserve the receivership property and the integrity of the business in receivership. *See id.* at 309.

24. This “doctrine of necessity” functions in a chapter 11 reorganization as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Bos. & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors’ continued operation); *In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (“While the doctrine [of necessity] was not codified in the Bankruptcy Code, courts have used their equitable power under Section 105(a) of the Code to authorize the payment of prepetition claims”); *In re Wehrenberg, Inc.*, 260 B.R. 468 (Bankr. E.D. Mo. 2001) (“Pursuant to 11 U.S.C. § 105(a) the Court may authorize the payment of prepetition claims when such payments are necessary to the continued operation of the Debtor.”). The doctrine is frequently invoked early in a reorganization, particularly in connection with those chapter 11 sections that relate to payment of prepetition claims. The court in *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), indicated its accord with “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.’” Accordingly, pursuant to section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

25. The Court also may authorize the Debtors to pay the Critical Vendors as set forth herein pursuant to section 363(b)(1) of the Bankruptcy Code. This section authorizes the trustee to use property of the estate other than in the ordinary course of business after notice

and a hearing. 11 U.S.C. § 363(b)(1). A debtor's decision to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *In re Trilogy Dev. Co., LLC*, 2010 Bankr. LEXIS 5636, at *3–4 (Bankr. W.D. Mo. 2010); *In re Channel One Commc'ns, Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990) (citing *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989). The business judgment rule is highly deferential to the Debtors and may be satisfied “as long as the proposed action *appears* to enhance the debtor's estate.” *In re Crystalin, LLC*, 293 B.R. 455, 463–64 (B.A.P. 8th Cir. 2003) (quoting *In re Food Barn Stores, Inc.*, 107 F.3d 558, 566 n.16 (8th Cir. 1997) (emphasis original, internal alterations and quotations omitted)); *see also In re AbitibiBowater, Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (the business judgment standard is “not a difficult standard to satisfy”). Under the business judgment rule, “management of a corporation's affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers' and directors' fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code.” *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (citing *In re United Artists Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003), *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303 (5th Cir. 1985) and *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992)); *see also Food Barn Stores*, 107 F.3d at 567 n.16 (“[w]here the [debtor's] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval as long as the proposed action appears to enhance the debtor's

estate” (citing *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985)); *In re Farmland Indus. Inc.*, 294 B.R. at 913 (approving the rejection of employment agreements and noting that “[u]nder the business judgment standard, the question is whether the [proposed action] is in the Debtors’ best economic interests, based on the Debtors’ best business judgment in those circumstances.” (citations omitted)).

26. Here, the Debtors believe that payment of the Critical Vendors is essential to the Debtors’ business performance during these Chapter 11 Cases, in particular, by maintaining the Debtors’ ability to timely and fully supply and distribute goods to its customers. Thus, because the relief requested is based on the Debtors’ sound business judgment and will benefit the Debtors and all parties in interest, it is authorized under section 363(b) of the Bankruptcy Code.

27. Finally, the Debtors believe that the approximately \$4.1 million of the Claims Cap amount requested in this Motion—equal to 5.1% of the total amount of the Vendor Claims—are entitled to priority treatment pursuant to section 503(b)(9) of the Bankruptcy Code. To confirm a chapter 11 plan the Debtors must pay such claims in full. *See* 11 U.S.C. §§ 503(b)(9); 507(a)(2); 1129(a)(9)(A).

28. Similar relief has been granted in many other chapter 11 cases. *See, e.g., In re Arch Coal, Inc.*, No. 16-40120 (CER) (Bankr. E.D. Mo. Jan. 13, 2016) (order authorizing debtors to pay up to \$5 million in critical vendor claims); *In re Walter Energy, Inc.*, No. 15-02741 (TOM) (Bankr. N.D. Ala. Sept. 3, 2015) (order authorizing debtors to pay up to \$8.2 million in critical vendor claims); *In re Alpha Natural Res., Inc.*, No. 15-33896 (KRH) (Bankr. E.D. Va. Sept. 3, 2015) (order authorizing debtors to pay up to \$44.5 million in critical vendor claims); *In re Patriot Coal Corp.*, No. 15-32450 (KLP) (Bankr. E.D. Va. June 4, 2015) (order

authorizing debtors to pay up to \$22 million in critical vendor claims); *In re Magnetation LLC*, No. 15-50307 (GFK) (Bankr. D. Minn. May 7, 2015) (order authorizing debtors to pay up to \$27.5 million in critical vendor claims); *In re Quicksilver Res. Inc.*, No. 15-10585 (LSS) (Bankr. D. Del. Apr. 14, 2015) (interim order authorizing debtors to pay up to \$5 million in critical vendor claims); *In re Allied Nev. Gold Corp.*, No. 15-10503 (MFW) (Bankr. D. Del. Apr. 15, 2015) (interim order authorizing debtors to pay up to \$10.9 million in critical vendor claims); *In re ProNerve Holdings, LLC*, No. 15-10373 (KJC) (Bankr. D. Del. Feb. 26, 2015) (order authorizing debtors to pay prepetition claims of certain critical vendors); *In re James River Coal Co.*, No. 14-31848 (KRH) (Bankr. E.D. Va. May 9, 2014) (order authorizing debtors to pay up to \$7.5 million in critical vendor claims); *In re Patriot Coal Corp.*, No. 12-12900 (SCC) (Bankr. S.D.N.Y. Aug. 2, 2012) (order authorizing debtors to pay up to \$25 million in critical vendor claims).

29. For all of the foregoing reasons, the Debtors seek authority, pursuant to sections 105(a), 363, 503(b)(9) and 507(a)(2) of the Bankruptcy Code, to pay, in the Debtors' sole discretion, the undisputed amounts owed by the Debtors to the Critical Vendors.

Financial Institutions Should Be Authorized to Honor and Process Related Checks and Transfers

30. All applicable banks and other financial institutions should be authorized to (i) fund transfer requests made by the Debtors and receive, process, honor and pay all checks presented for payment related to claims the Debtors request authority to pay through the Motion, regardless of whether the checks were presented or fund transfer requests were submitted before or after the Petition Date and (ii) rely on the Debtors' designation of any check as approved by the Proposed Order.

Satisfaction Of Bankruptcy Rule 6003 And Waiver Of Bankruptcy Rule 6004

31. The Debtors seek immediate authorization for the relief contemplated by this Motion. Pursuant to Bankruptcy Rule 6003(b), the Court cannot grant “a motion to use, sell, lease or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” within twenty-one (21) days of the filing of the petition unless the relief is “necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003(b). “[I]mmediate and irreparable harm” as used in Rule 6003 exists where the absence of relief would impair a debtor’s ability to reorganize or would threaten the debtor’s status as a going concern. *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990). The Debtors believe that obtaining immediate authorization to pay Critical Vendors is vital to their continued viability. Specifically, the Debtors believe that any delay or interruption in supply of the goods and services provided by the Critical Vendors, however temporary it might be, would severely harm the Debtors’ business operations given the importance of the key products and supply chain services these parties provide. Thus, the Debtors submit that the requirements of Bankruptcy Rule 6003(b) are met and that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

32. 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). For the reasons set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h).

Reservation Of Rights

33. Nothing in this Motion is intended or should be construed: (a) as an admission as to the validity of any claim against the Debtors or their estates; (b) as a waiver of the Debtors' right to dispute any claim; (c) as approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) to prejudice any of the Debtors' rights to seek relief on account of any amounts owed or paid to any Critical Vendor.

Notice

34. Notice of this Motion will be provided to: (i) the U.S. Trustee; (ii) counsel to the agent under the Debtors' ABL Agreement; (iii) counsel to the agent under the Debtors' Term Loan Agreement; (iv) counsel to the ABL DIP Agent; (v) counsel to the Term DIP Agent; (vi) counsel to the Term DIP Credit Parties; (vii) the indenture trustee for the Debtors' senior unsecured notes; (viii) the Internal Revenue Service; (ix) the Securities and Exchange Commission; (x) the United States Department of Labor; (xi) the United States Attorney's Office for the Eastern District of Missouri; and (xii) the holders of the thirty (30) largest unsecured claims against the Debtors, on a consolidated basis (collectively, the "Notice Parties"). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

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WHEREFORE, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as is just and proper.

Dated: February 8, 2016
St. Louis, Missouri

Respectfully submitted,
CARMODY MACDONALD P.C.

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*Proposed Counsel to the Debtors and
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Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:

NORANDA ALUMINUM, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 16-____(____)

(Jointly Administered)

Re: Docket Nos. [____]

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CLAIMS OF CERTAIN CRITICAL VENDORS AND (II) DIRECTING FINANCIAL
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the Motion² of Noranda Aluminum, Inc. and its affiliated debtors and debtors in possession in the above-captioned cases (each a “Debtor” and, collectively, the “Debtors”), requesting entry of an order pursuant to sections 105, 363, 503(b)(9) and 507(a)(2) of title 11 of the United States Code (the “Bankruptcy Code”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing, but not directing, the Debtors, in their discretion, to pay the prepetition claims of certain Critical Vendors and directing financial institutions to honor and process related checks and electronic transfers; and it

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number and state of incorporation, are: Noranda Aluminum, Inc. (Del.; 5285), Gramercy Alumina Holdings Inc. (Del.; 1941), Gramercy Alumina Holdings II, Inc. (Del.; 2806), NHB Capital, LLC (Del.; 0777), Noranda Alumina LLC (Del.; 4769), Noranda Aluminum Acquisition Corp. (Del.; 8458), Noranda Aluminum Holding Corp. (Del.; 8550), Noranda Bauxite Ltd. (Jamaica), Noranda Bauxite Holdings Ltd. (St. Lucia), Noranda Intermediate Holding Corp. (Del.; 3238) and Norandal USA, Inc. (Del.; 6477). The address of the Debtors’ corporate headquarters is 801 Crescent Centre Drive, Suite 600, Franklin, Tennessee 37067.

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion. The terms “DIP Agents,” “Term DIP Agent,” and “DIP Credit Parties” shall have the meaning ascribed to them in the *Debtors’ Motion for Entry of Interim and Final Orders to (i) Authorize Debtors in Possession to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364, (ii) Grant Liens and Superpriority Claims to Postpetition Lenders Pursuant to 11 U.S.C. §§ 364 and 507, (iii) Provide Adequate Protection to Prepetition Credit Parties, (iv) Modify Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, 364, And 507, (v) Schedule Final Hearing Pursuant to Bankruptcy Rules 4001(b) And (c) and Bankruptcy Rule 4001-2; and (vi) Grant Related Relief*, filed contemporaneously herewith.

appearing that jurisdiction is proper pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that that the relief requested is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and it appearing that such relief is necessary to avoid immediate and irreparable harm meaning that the requirements of Rule 6003 of the Federal Rules of Bankruptcy Procedure have been satisfied; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED that:

1. The Motion is GRANTED to the extent provided herein.

2. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay the prepetition claims of certain Critical Vendors (collectively, the “Vendor Claims”), subject to the conditions set forth in this Order. The Debtors shall not pay any Vendor Claim in excess of \$100,000 absent the written consent of the advisors to the Term DIP Agent, which consent shall not be unreasonably withheld; provided, that if the Term DIP Agent or its advisors do not deliver a written objection to such payment by 11:59 p.m. on the second business day after the receipt by the Term DIP Agent’s counsel of a written request from the Debtors for consent to such payment, the Debtors shall be authorized to pay such Vendor Claim, subject to the conditions set forth in this Order; provided further, that written consents, objections, and requests made pursuant to this sentence may be delivered by electronic mail or facsimile.

3. The Claims Cap applicable to payment of the Vendor Claims upon entry of this Order shall not exceed \$8.1 million in the aggregate unless otherwise ordered by the Court and with the consent of the DIP Agents.

4. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay the Vendor Claims in the ordinary course of business, when due, and not on an accelerated basis; provided, however, that any Critical Vendor that accepts payment pursuant to the authority granted in this Order agrees to supply goods and services to the Debtors postpetition on Customary Trade Terms or on such other favorable terms as are acceptable to the Debtors; provided, further, that the Debtors inability to agree on Customary Trade Terms shall not preclude them from paying a Vendor Claim when the Debtors determine, in the reasonable exercise of their business judgment and in consultation with the DIP Agents, such payment is necessary to the Debtors' operations.

5. Any Critical Vendor that accepts payment pursuant to the authority granted in this Order shall be deemed to (a) agree to the terms and provisions of this Order and (b) have waived, to the extent paid, any and all prepetition claims against the Debtors, their asserts and their properties.

6. The Debtors shall undertake all appropriate efforts in the exercise of their sound business judgment to cause each Critical Vendor to enter into an agreement with the Debtors (the "Trade Agreement"), including, but not limited to, the following terms:

- (a) The amount of such Critical Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for purposes of the Proposed Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);
- (b) The Critical Vendor's agreement to be bound by the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), which were favorable to the Debtors and in effect between such Critical Vendor and the

Debtors on a historical basis for the period within one-hundred twenty (120) days of the Petition Date, or such other trade terms as mutually agreed to by the Debtors and such Critical Vendor;

- (c) The Critical Vendor's agreement to provide goods and/or services to the Debtors based upon Customary Trade Terms, and the Debtors' agreement to pay the Critical Vendor in accordance with such terms;
- (d) The Critical Vendor's agreement not to file or otherwise assert against any of the Debtors, their estates or any of their respective assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from goods and/or services provided to the Debtors prior to the Petition Date, and that, to the extent the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- (e) The Critical Vendor's acknowledgment that it has reviewed the terms and provisions of the Proposed Order, and consents to be bound thereby;
- (f) The Critical Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and
- (g) The Critical Vendor's agreement that it has received payment of a prepetition claim, but if it subsequently refuses to supply goods and/or services to the Debtors on Customary Trade Terms, any payments received by the Critical Vendor on account of its claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtors any payments received on account of its claim to the extent the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of setoff or reclamation.

7. The Debtors may, in their sole discretion, declare a Trade Agreement with an individual Critical Vendor to have terminated, together with the other benefits to the Critical Vendor as contained in this Order, on the date the Debtors deliver notice to the Critical Vendor that such vendor has not complied with the terms and provisions of the Trade Agreement or has failed to continue to provide Customary Trade Terms to the Debtors.

8. If a Trade Agreement is terminated as set forth above, or a Critical Vendor who has received payment of a prepetition claim later refuses to continue to supply goods and/or services to the Debtors on Customary Trade Terms during the pendency of these Chapter 11 Cases, the Debtors may, in their discretion, declare that provisional payments made to such vendor on account of prepetition trade claims be deemed to have been in payment of then outstanding postpetition amounts owed to such vendor without further order of the Court or action by any person or entity. A Critical Vendor shall then immediately repay to the Debtors any payments made to it on account of its Vendor Claim to the extent that such payments exceed the postpetition amounts then owing to such vendor, without the right of setoff or reclamation, it being the express intention of this Court to return the parties to the status quo in effect as of the date of entry of this Interim Order with respect to all prepetition claims if a Trade Agreement is terminated.

9. The execution of a Trade Agreement by the Debtors shall not be declared a waiver of any other cause of action, including any avoidance action that may be held by the Debtors.

10. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or automated clearing house transfers evidencing amounts paid by the Debtors under this Order, whether presented prior to or after the Petition Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

11. The Debtors shall provide, on a confidential basis, to the DIP Agents, weekly written reports of all payments pursuant to this Order, which reports shall specify any payments made on account of Vendor Claims, and reasonable and timely access to information sufficient to enable such parties to monitor payments made, obligations satisfied, and other actions taken pursuant to this Order. In addition, on a monthly basis, the Debtors shall disclose, confidentially to any statutory creditors' committee appointed in these cases and the Office of the United States Trustee, the payments made on account of Vendor Claims.

12. Notwithstanding anything to the contrary herein, (i) payments made by the Debtors pursuant to the authority granted in this Order must be in compliance with, and shall be subject to, the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "DIP Agreements") and the terms and conditions of the interim and final orders, as applicable, approving the DIP Agreements and governing the Debtors' use of cash collateral (in either case, the "DIP Order"), and (ii) to the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

13. Nothing in the Motion or this Order, or the Debtors' payment of any claims pursuant to this Order, shall be deemed or construed: (a) as an admission as to the validity of any claim against the Debtors or their estates; (b) as a waiver of the Debtors' right to dispute any claim; (c) as approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) to prejudice any of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Critical Vendor.

14. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

15. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief in the Motion is necessary to avoid immediate and irreparable harm.

16. No later than two (2) business days after the date of this Order, the Debtors shall serve a copy of the Order on the Notice Parties and shall file a certificate of service no later than 24 hours after service.

Dated: February __, 2016
St. Louis, Missouri

UNITED STATES BANKRUPTCY JUDGE

Order Prepared By:

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