

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

**In re:**

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

Debtors.

**Chapter 11**

**Case No. 16-10083-399**

**(Jointly Administered)**

**Re: Docket Nos. [17]**

**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) AUTHORIZING FINANCIAL  
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the Motion<sup>1</sup> 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 authorizing financial institutions to honor and process related checks and electronic transfers; and it 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

<sup>1</sup> 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,

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 the Debtors having represented 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 the Motion is GRANTED in that:

1. 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.

2. 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.

3. 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,

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(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.

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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.


12. 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.

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

14. 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.

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

DATED: February 10, 2016  
St. Louis, Missouri  
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Barry S. Schermer  
United States Bankruptcy Judge

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