

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Allied Nevada Gold Corp., *et al.*,¹

Debtors.

Chapter 11

Case No. 15-10503 (MFW)

Jointly Administered

Objection Deadline: May 26, 2015 at 12:00 p.m. (EDT)

**Hearing Date: June 1, 2015 at 10:30 a.m.
(EDT)**

**DEBTORS' MOTION FOR ENTRY OF AN
ORDER (A) AUTHORIZING AND APPROVING THE DEBTORS' KEY
EMPLOYEE INCENTIVE PROGRAM AND (B) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “***Debtors***”), by and through their undersigned counsel, seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “***Proposed Order***”): (a) authorizing and approving the Debtors’ short-term incentive program (the “***KEIP***”); and (b) granting related relief. In support of this motion, the Debtors submit the declaration of Stephen M. Jones (the “***Jones Declaration***”), attached hereto as **Exhibit B**, and the declaration of Steven D. Simms (the “***Simms Declaration***”), attached hereto as **Exhibit C**, and respectfully represent as follows:

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Allied Nevada Gold Corp. (7115); Allied Nevada Gold Holdings LLC (7115); Allied VGH Inc. (3601); Allied VNC Inc. (3291); ANG Central LLC (7115); ANG Cortez LLC (7115); ANG Eureka LLC (7115); ANG North LLC (7115); ANG Northeast LLC (7115); ANG Pony LLC (7115); Hasbrouck Production Company LLC (3601); Hycroft Resources & Development, Inc. (1989); Victory Exploration Inc. (8144); and Victory Gold Inc. (8139). The corporate headquarters for each of the above Debtors are located at, and the mailing address for each of the above Debtors, except Hycroft Resources & Development, Inc., is 9790 Gateway Drive, Suite 200, Reno, NV 89521. The mailing address for Hycroft Resources & Development, Inc. is P.O. Box 3030, Winnemucca, NV 89446.

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “*Amended Standing Order*”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 363(b) and 503(c) of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

BACKGROUND

A. General Background

4. On March 10, 2015 (the “*Petition Date*”), each of the Debtors filed in this Court a voluntary petition under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the appointment of a trustee or examiner has been made in the chapter 11 cases. On March 19, 2015, the United States Trustee for Region 3 (the “*U.S. Trustee*”) appointed an official committee of unsecured creditors (the “*Creditors Committee*”) in these chapter 11 cases pursuant to Bankruptcy Code section 1102 [Docket No. 95]. On April 10, 2015, the U.S. Trustee appointed an official committee of equity security holders (the “*Equity Committee*”) in these chapter 11 cases pursuant to Bankruptcy Code section 1102 [Docket No. 157].

B. Specific Background

5. Since 2010, the Debtors have had various practices, programs and policies that provide important benefits for their employees (the “*Employees*”), including, without limitation, a number of incentive programs designed to provide additional compensation and other benefits to encourage exceptional Employee performance for the benefit of the Debtors’ business (collectively, the “*Pre-Petition Employee Incentive Programs*”). Specifically, the Debtors historically have offered, among other things, (i) a short-term cash-based bonus program for hourly Employees based on certain performance metrics and paid on a quarterly basis, and (ii) an annual incentive plan for salaried Employees consisting of a cash portion (the “*Annual Cash Bonus Program*”) and a stock portion based on certain operating metrics as determined by the board of directors (the “*Board of Directors*”). Salaried employees received payments on account of the Annual Cash Bonus Program at the end of every February, including in February 2015 with respect to the 2014 Annual Cash Bonus Program. On April 15, 2015, the Court authorized the Debtors to continue their Pre-Petition Employee Incentive Programs as they relate to non-insiders [Docket No. 193].

6. The Debtors’ ability to maintain their business operations, maximize the value of their assets and maximize stakeholder recoveries through a successful and expedient restructuring process hinges on the Debtors’ ability to retain and incentivize Key Employees (as defined below) during this critical period. Accordingly, the Debtors seek to implement a post-petition incentive program to motivate certain non-insider Key Employees to advance the Debtors’ business and restructuring goals during the pendency of the chapter 11 cases. The proposed post-petition incentive program, including the cost thereof, replicates the Annual Cash Bonus Program, one of the Pre-Petition Employee Incentive Programs that was already approved by the Court, but modifies (i) the metrics with respect to such program based on the Debtors’

current operational and strategic goals, as discussed below, and (ii) the timing of payments to certain Key Employees. Specifically, the Debtors seek to modify the Annual Cash Bonus Program in order to make incentive payments to non-insider Key Employees for the second and third quarters of 2015 on a quarterly, rather than an annual, basis to incentivize such employees to achieve critical goals on an expedited timeframe.

7. The Debtors provided a draft of the motion to counsel to the DIP Lenders, DIP Agent and Noteholder Ad Hoc Group in advance of filing. The DIP Lenders, DIP Agent and Noteholder Ad Hoc Group support the Debtors' implementation of the KEIP. Additionally, the Debtors provided drafts of the motion to counsel to the Creditors Committee and proposed counsel to the Equity Committee in advance of filing.

THE KEY EMPLOYEE INCENTIVE PROGRAM

8. The Debtors have designed the KEIP in order to motivate their Key Employees to continue operating the Debtors' business with the utmost operational efficiency and cost-effectiveness, preserving and enhancing the value of the estates and improving the speed and efficiency with which the Debtors may administer the chapter 11 cases. The KEIP metrics are consistent with, and are in fact harder to satisfy than, the metrics relied upon by the Annual Cash Bonus Program. Moreover, the KEIP metrics focus on short-term (quarter-by-quarter) goals that are appropriate to better position the Debtors for successful emergence from chapter 11. The Debtors submit that the KEIP is necessary to motivate and incentivize their workforce during this critical time in the Debtors' restructuring.

(i) Structure of the KEIP

9. The KEIP divides the participating Employees into two tiers: (i) nine (9) non-insider Employees that have a significant impact on the Debtors' short-term operational performance and the Debtors' ability to achieve certain strategic goals (the "***Tier 1 Employees***")

and (ii) eighty-six (86) non-insider Employees who have an impact on the Debtors' short-term operational performance (the "**Tier 2 Employees**" and, together with the Tier 1 Employees, the "**Key Employees**").² Thus, the KEIP is narrowly tailored to incentivize only those Employees that are able to directly impact the Debtors' business and restructuring goals. Indeed, less than 25% of the Debtors' Employees are eligible to participate in the KEIP.

10. Pursuant to the KEIP, (i) all of the Key Employees are to be rewarded based on the achievement of certain quarterly operational goals (the "**Operational Goals**") and (ii) Tier 1 Employees are also to be rewarded based on the achievement of certain strategic goals (the "**Strategic Goals**"). Quarterly awards under the KEIP will be paid to each Key Employee as soon as practicable after the end of each quarter, provided that such Key Employee remains actively employed as of the date of such payment.³ Key Employees will be paid a percentage of a target bonus amount based on the degree of achievement of each Operational Goal as follows:⁴

Operational Goal	Percentage of Bonus Target Amount	Overall Number of Incidents	Achievement Percentage
Safety – Lost Time Accidents ⁵	12.5%	0	100%
		1 or more	0%
Environmental – Reportable Incidents resulting in both Orders and fines ⁶	12.5%	0	100%
		1 or more	0%

² A list of the Key Employees, their titles with the Debtors, and the potential target payment to each Key Employee has been provided to the U.S. Trustee.

³ Awards on account of Strategic Goals, to the extent earned, will be paid as soon as practicable after the end of the quarter during which such Strategic Goal is achieved.

⁴ The Operational Goals are consistent with the business plan that was the basis of the restructuring support agreement entered into between the Debtors and certain of the Debtors' prepetition lenders.

⁵ A "Lost Time Accident" is an accident that requires an Employee to lose time at work.

⁶ A "Reportable Incident" is the occurrence of any environmental event that requires the Debtors to give notice to any regulatory body. An "Order" refers to a requirement by a regulatory body that the Debtors take a specified action in response to a Reportable Incident.

Operational Goal	Percentage of Bonus Target Amount	Percent of Goal Achieved	Achievement Percentage
Total Tons Mined Q2 2015 Goal: 25,412,800 Tons Q3 2015 Goal: 19,800,000 Tons⁷	15%		
Ounces of Gold (Cyanide) Placed on Leach Pads Q2 2015 Goal: 77,291 Ounces of Gold (Cyanide) Q3 2015 Goal: 96,510 Ounces of Gold (Cyanide)	15%	105%	105%
		95-100%	100%
Solution Flow to Leach Pads Q2 2015 Goal: Average of 29,000 Gallons/Minute Q3 2015 Goal: Average of 29,000 Gallons/Minute	15%	90-95%	50%
		Below 90%	0%
Solution Flow Through Process Plants Q2 2015 Goal: Average of 25,000 Gallons/Minute Q3 2015 Goal: Average of 25,000 Gallon/Minute	15%		

⁷ The reduction in the "Total Tons Mined" goal for Q3 2015 reflects the fact that the proportion of ore to waste is expected to be significantly higher for Q3 2015 than Q2 2015. Thus, more trucks will be required to transport the ore to the leach pad, which will reduce the amount of trucks available to service all of the shovels and, therefore, the "Total Tons Mined."

Cost/Ton Mined	15%	105%	105%
Q2 2015 Goal: Average of \$1.50/Ton		95-100%	100%
Q3 2015 Goal: Average of \$1.50/Ton		90-95%	50%
		Below 90%	0%

11. Additionally, the Tier 1 Employees will be rewarded based on the achievement of certain Strategic Goals, which are one-time incentive payments intended to recognize the efforts required to accomplish strategic events that will advance certain business goals of the Debtors and smoothly transition the Debtors through emergence from chapter 11. Tier 1 Employees will be paid a percentage of base salary based on the achievement of the following Strategic Goals:

Strategic Goal	Tier 1 – Percentage of Base Salary
Begin operation of leach pad expansion by end of Q2 2015 and within 5% of budget.	9%
Completion and operation of mill demonstration plant by end of Q3 2015 and within 5% of budget.	9%
Net proceeds (after repayment of related capital leases) from equipment sales of more than \$10 million.	4%

12. If 100% of the Operational Goals and the Strategic Goals are achieved, the total payout to the 95 Key Employees for the second and third quarter of 2015 will be only \$1.396 million, consisting of \$1.027 million on account of Operational Goals and \$0.369 million on account of Strategic Goals. This equates to an average total payment per Key Employee of approximately \$14,692. By comparison, the Debtors' 105 salaried Employees earned \$1.53 million on account of the 2014 Annual Cash Bonus Program, out of a maximum potential payout of \$3.41 million under such program. The \$1.396 million maximum payout under the KEIP for

Q2 and Q3 2015, on an annualized basis, would represent only 7.61% of the \$36.685 million total annual cash compensation for all Employees, which is consistent with the maximum percentage payout under the Annual Cash Bonus Program. Further, while the Debtors reserve the right to seek to continue the KEIP for Q4 2015 and beyond, in the event that the chapter 11 cases are still pending, the Debtors will not seek to make any payments on account of any bonuses that would have accrued through Q1 2015 under the Annual Cash Bonus Program if such program is modified as requested herein. Therefore, the true cost of the KEIP is significantly lower than the cost of the Annual Cash Bonus Program.

13. Further, the Operational and Strategic Goals that comprise the KEIP are (i) consistent with, and are in fact harder to satisfy than, the metrics that comprised the Annual Cash Bonus Program⁸ and (ii) consistent with the metrics that comprise the incentive programs utilized by comparable gold and precious metal mining companies. *See* Jones Declaration at ¶ 7; Simms Declaration at ¶ 6. Specifically, the award amounts available under the KEIP are consistent with the incentive awards that other gold and precious metal mining companies pay to their key employees and the awards that were available under the Pre-Petition Employee Incentive Programs. *See* Jones Declaration at ¶ 7; Simms Declaration at ¶ 6

RELIEF REQUESTED

14. By this motion, the Debtors request entry of an order, substantially in the form attached hereto as **Exhibit A**: (a) authorizing and approving the Debtors' KEIP; and (b) granting related relief.

⁸ The comparable metrics from the 2014 Annual Cash Bonus Program are attached hereto as **Exhibit D**. The Debtors' 2014 operational results are attached hereto as **Exhibit E**.

SUPPORTING AUTHORITY

15. To maintain the Debtors' operations, preserve and maximize the value of their estates, and effectuate the Debtors' emergence from chapter 11 on an expeditious timeline, it is essential that the Debtors motivate their workforce to attain certain Operational and Strategic Goals. Accordingly, the Debtors submit that the KEIP is critical to their ability to operate effectively, preserve the value of their estates throughout the chapter 11 cases and emerge from chapter 11 on an expedited basis and, therefore, is in the best interests of the Debtors, their estates and all of their stakeholders.

A. Implementing the KEIP is a Reasonable Exercise of the Debtors' Sound Business Judgment

16. The Debtors' implementation of the KEIP is a sound exercise of their business judgment and should be approved. Bankruptcy Code section 363(b)(1) provides, in relevant part, that debtors "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). Under section 363(b), courts require only that a debtor "show that a sound business purpose justifies such actions." *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted); *see also In re Elpida Memory, Inc.*, No. 12-10947 (CSS), 2012 WL 6090194, at *5 (Bankr. D. Del. Nov. 20, 2012) (noting that it is "well-settled" that a debtor may use its assets outside the ordinary course where such use "represents the sound exercise of business judgment"); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (stating that judicial approval under Bankruptcy Code section 363 requires a showing that the proposed action is fair and equitable, in good faith, and supported by a good business reason). Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *In re Johns-*

Manville Corp., 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that “[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task”).

17. Implementing the KEIP is a proper exercise of the Debtors’ business judgment and is in the best interests of the Debtors, their estates, and all of their stakeholders. The efforts of the Key Employees are important to the Debtors’ business and the Operational Goals will motivate the Key Employees to use their best efforts to run the Debtors’ business efficiently. In addition, the Strategic Goals will motivate the Debtors’ Tier 1 Employees—who serve in the positions that are most critical to the Debtors’ operations and restructuring process and, therefore, are uniquely placed to improve the Debtors’ performance—to drive value for these chapter 11 estates and use their best efforts to ensure the Debtors’ attainment of operational and strategic targets and successful emergence from chapter 11.

18. Moreover, it is clear that the Debtors’ restructuring initiatives have placed additional demands on the Tier 1 Employees, making the provision of appropriate, market-based compensation and incentives essential to the success of the Debtors’ restructuring efforts. In addition to their ordinary-course activities needed to drive the Debtors’ financial and operational performance, the Tier 1 Employees must work diligently to manage the Debtors’ reorganization process. These Tier 1 Employees and their skills, expertise, and motivation are essential to the Debtors’ ability to effectuate a successful reorganization in these chapter 11 cases and will position the Debtors for future success.

19. The award opportunities for Key Employees depend on the Key Employees’ ability to attain certain Operational Goals targeted to continuing the Debtors’ business as efficiently and as successfully as possible. The additional Strategic Goals set forth for the Tier 1

Employees are targeted to advancing certain specific business goals to ensure the success of the Debtors' continued operations during the pendency of the chapter 11 cases and following the Debtors' exit from chapter 11.

20. The Key Employees can earn incentive awards if, and only if, they are successful at meeting the proposed Operational and/or Strategic Goals, as applicable, to keep the Debtors' business operations running as efficiently as possible during the pendency of the chapter 11 cases. By linking the Key Employee's bonus opportunities to operational efficiencies, as well as, for Tier 1 Employees, Strategic Goals, the KEIP successfully and fairly aligns the interests of the Debtors, their employees, and their stakeholders. Thus, the KEIP is designed to achieve "desired performance." *See In re Global Home Prods., LLC*, 369 B.R. 778, 786 (Bankr. D. Del. 2007); *In re Dana Corp.*, 358 B.R. 567, 576 (Bankr. S.D.N.Y. 2006).

21. In addition to the KEIP being calculated to achieve desired performance and drive value, the incentive payments are reasonable. As set forth more fully in the Jones Declaration, the Debtors based the KEIP on past employee compensation practices—historically, all employees have been compensated with bonuses for achieving certain operational benchmarks. *See Jones Declaration at ¶ 7.* The Debtors have determined that the award opportunities and total costs of the KEIP are reasonable and are in line with market practices and the Debtors' historical practices for compensating Key Employees. *See Jones Declaration at ¶ 7; Simms Declaration at ¶ 6.* The Debtors believe that the absence of short-term incentive opportunities for Key Employees will reduce efficiency in the Debtors' business operations, which could result in additional costs to the Debtors' estates, as well as distract the Debtors from the restructuring at a critical time in the restructuring process.

22. Courts in this and other jurisdictions have recognized that programs such as the KEIP can be an efficient means of maximizing value for a debtor's estate and, accordingly, have approved similar incentive programs. *See, e.g., In re Longview Power, LLC*, No. 13-12211 (BLS) (Bankr. D. Del. Dec. 18, 2013), Docket No. 661; *In re IPC Int'l Corp.*, No. 13-12050 (MFW) (Bankr. D. Del. Sept. 3, 2013) (approving debtors' key employee incentive plan); *In re Synagro Techs., Inc.*, No. 13-11041 (BLS) (Bankr. D. Del. May 13, 2013) (same); *In re Prommis Holdings*, No. 13-10551 (BLS) (Bankr. D. Del. Apr. 16, 2013) (same); *In re DDMG Estate (f/k/a Digital Domain Media Grp., Inc.)*, No. 12-12568 (BLS) (Bankr. D. Del. Oct. 22, 2012) (same); *In re Local Insight Media Holdings, Inc.*, No. 10-13677 (KG) (Bankr. D. Del. Mar. 29, 2011) (same); *see also Dana Corp.*, 358 B.R. at 584 (approving management incentive plan).

23. Accordingly, the Debtors submit that implementing the KEIP is a valid exercise of the Debtors' business judgment and the approval of the KEIP is in the best interests of the Debtors, their estates, and all parties in interest in these chapter 11 cases.

B. The KEIP Satisfies the Requirements of Bankruptcy Code Section 503(c)

24. Bankruptcy Code section 503(c) provides criteria for courts to use in approving certain types of payments to "insiders" and "other transfers of obligations that are outside the ordinary course of business." Bankruptcy Code section 503(c) contains three subsections: (a) Bankruptcy Code section 503(c)(1) contains a general prohibition, subject to certain exceptions, of retention plans for insiders of a debtor; (b) Bankruptcy Code section 503(c)(2) places limitations on severance payments to insiders of a debtor; and (c) Bankruptcy Code section 503(c)(3) sets forth standards governing other transfers to managers and other parties that are outside the ordinary course of business and not justified by the facts and circumstances of the case. *See* 11 U.S.C. § 503(c). The Debtors submit that neither Bankruptcy Code section

503(c)(1) nor 503(c)(2) is applicable under the circumstances as none of the Key Employees are insiders within the meaning of Bankruptcy Code section 101(31)(B). In addition, although Bankruptcy Code section 503(c)(3) may be applicable to the KEIP, review of a business decision regarding compensation pursuant to Bankruptcy Code section 503(c)(3) mirrors review under the business judgment rule pursuant to Bankruptcy Code section 363(b). *See Global Home Prods.*, 369 B.R. at 786-87 (applying business judgment rule to evaluate incentive plan with respect to non-insiders under Bankruptcy Code section 503(c)(3)). As discussed above, the Debtors' implementation of the KEIP is a sound exercise of the Debtors' business judgment. Accordingly, Bankruptcy Code section 503(c)(3), to the extent applicable, is satisfied.

(i) *The KEIP is Not Governed by Bankruptcy Code Sections 503(c)(1) or (2)*

25. Bankruptcy Code section 503(c)(1) applies solely to retention plans benefitting insiders, and Bankruptcy Code section 503(c)(2) applies solely to severance payments to insiders. *See* 11 U.S.C. §§ 503(c)(1), (2). Neither provision applies to performance-based incentive plans. *See, e.g., In re Velo Holdings, Inc.*, No. 12-11384 (MG), 2012 WL 2015870, at *6 (Bankr. S.D.N.Y. June 6, 2012) (finding that an incentive-based plan alleviated the need for a Bankruptcy Code section 503(c)(1) analysis); *In re Borders Grp., Inc.*, 453 B.R. 459, 471 (Bankr. S.D.N.Y. 2011) (finding that “the Debtors [had] met their burden of establishing that the KEIP [was] incentivizing, thereby alleviating the need for a Bankruptcy Code section 503(c)(1) analysis”); *Dana Corp.*, 358 B.R. at 584 (concluding that Bankruptcy Code sections 503(c)(1) and 503(c)(2) did not apply to incentive plans); *In re Calpine Corp.*, No. 05-60200 (BRL) (Bankr. S.D.N.Y.), Hr'g Tr. 84–85, Apr. 26, 2006 (stating that Bankruptcy Code sections 503(c)(1) and 503(c)(2) do not apply to incentive programs); *In re Nobex Corp.*, No. 05-20050 (CSS) (Bankr. D. Del.), Hr'g Tr. 67, Jan. 12, 2006 (explaining that Bankruptcy Code section 503(c)(1) does not apply to incentive programs).

26. The KEIP is a non-insider performance-based plan that provides award opportunities to Key Employees upon the Debtors' achievement of specific performance targets, the achievement of which will benefit the Debtors' business as a whole and, as a result, all stakeholders. Significantly, the KEIP does not contain either retention-based or severance components: the Key Employees are only paid under the KEIP in the event that they achieve the applicable Operational and Strategic Goals. While a side effect of the KEIP might be that Key Employees are encouraged to maintain their employment with the Debtors, such side effect does not transform the KEIP into a retention-based plan.

(ii) *The KEIP Satisfies the Requirements of Bankruptcy Code Section 503(c)(3)*

27. The Debtors' implementation of the KEIP satisfies the requirements under Bankruptcy Code section 503(c)(3). 11 U.S.C. § 503(c)(3). Bankruptcy Code section 503(c)(3) prohibits certain transfers made to officers, managers, consultants, and others that are both outside the ordinary course of business and not justified by the facts and circumstances of the case. *Id.* In applying Bankruptcy Code section 503(c)(3), the Court in *Dana Corp.* noted that the “test in section 503(c)(3) appears to be no more stringent than one courts must apply in approving any administrative expense under section 503(b)(1)(A) . . . [an] expense must be an actual, necessary cost, or expense of preserving the estate.” *Dana Corp.*, 358 B.R. at 576; *see also In re Global Home Prods., LLC*, 369 B.R. 778, 783 (Bankr. D. Del. 2007) (noting that a review under Bankruptcy Code section 503(c)(3), as opposed to Bankruptcy Code section 503(c)(1), “utilizes the more liberal business judgment review under § 363”).

28. Further, courts that have analyzed the Bankruptcy Code section 503(c)(3) prohibition on “other transfers” have applied a standard based upon the standard applied under Bankruptcy Code section 363(b)—specifically, transfers are approved if such transfers are a

sound exercise of a debtor's business judgment and warranted by the facts and circumstances of the case. *See Global Home Prods.*, 369 B.R. at 783; *Velo Holdings*, 2012 WL 2015870, at *9 (“Courts have held that the ‘facts and circumstances’ language of section 503(c)(3) creates a standard no different than the business judgment standard under section 363(b).”); *Borders Grp.* 453 B.R. at 473 (noting that section 503(c)(3)’s “facts and circumstances” test “creates a standard no different than the business judgment standard under section 363(b) of the Bankruptcy Code”); *In re Mesa Air Grp.*, No. 10-10018, 2010 WL 3810899, at *4 (Bankr. S.D.N.Y. Sept. 24, 2010); *In re Nobex Corp.*, No. 05-20050, 2006 WL 4063024, at *2 (Bankr. D. Del. Jan. 19, 2006).

29. In *Global Home Products*, the Bankruptcy Court for the District of Delaware considered six factors in determining whether an incentive plan is appropriate: (a) whether the plan is calculated to achieve the desired performance; (b) whether the cost of the plan is reasonable in the context of a debtor's assets, liabilities, and earning potential; (c) whether the scope of the plan is fair and reasonable or discriminates unfairly among employees; (d) whether the plan is consistent with industry standards; (e) whether the debtor performed due diligence in investigating the need for the plan; and (f) whether the debtor received independent counsel in performing due diligence, creating, and authorizing the plan. *See id.* at 786 (citing *Dana Corp.*, 358 B.R. at 576–77). These factors are not exhaustive elements required for approval of an incentive plan; rather, they are factors to be considered as a court evaluates the totality of the circumstances related to an incentive plan. *See Dana Corp.* at 576.

30. As set forth below, the KEIP is fully justified by the facts and circumstances of these chapter 11 cases and, therefore, satisfies the requirements of Bankruptcy Code section 503(c)(3) and the standard set forth in *Global Home Products* and *Dana Corp.*:

- The KEIP is Calculated to Achieve Desired Performance. The KEIP is calculated to achieve the desired performance—specifically, the attainment of key objectives that will enable the Debtors to successfully emerge from chapter 11. The KEIP seeks to incentivize the Debtors’ Key Employees, through the use of Operational and/or Strategic Goals, as applicable, to continue the efficient operation of the Debtors’ business and advance certain business goals to ensure that once the Debtors emerge from chapter 11, the Debtors’ business operations will continue and grow. If the Key Employees fail to meet the Operational and Strategic Goals set forth in the KEIP, the Key Employees are not entitled to receive the related awards thereunder.
- The Cost of the KEIP is Reasonable. The cost of the KEIP is reasonable, market-based, and, in the context of the size of the Debtors’ funded debt, *de minimis*. Indeed, the aggregate amount of the KEIP award opportunities—estimated at maximum to be approximately \$1.396 million—is approximately 0.25% of the Debtors’ more than \$550 million of funded debt that is being restructured in these chapter 11 cases.
- The Scope of the KEIP is Fair and Reasonable. The KEIP creates incentives and goals for all Key Employees, to encourage all Key Employees to strive for the efficient and successful operation of the Debtors’ business. There are achievement opportunities for all of the Debtors’ Key Employees, as well as additional opportunities for the Tier 1 Employees who are capable of advancing certain business goals that other Key Employees are not in the position to advance. In light of the size of the Debtors’ operations, the scope of the proposed KEIP is fair and reasonable.
- The KEIP’s Award Opportunities are Consistent with Market Practices. Further, the KEIP closely tracks the same metrics relied on by other gold and precious metal manufacturers in creating their own incentive programs. Based on this knowledge of common industry practice, the metrics relied upon to set goals, the award opportunities and the payout amounts available under the KEIP are in the range of reasonableness in comparison to observed market practices. *See* Jones Declaration at ¶ 7; Simms Declaration at ¶ 6.
- The Debtors Performed Due Diligence in Developing the KEIP. To ensure that the target opportunities available under the KEIP are competitive and market-based, the Debtors performed considerable due diligence and analyzed the Key Employees’ total direct compensation as compared to total direct compensation provided at other gold and silver mining companies. *See* Jones Declaration at ¶ 6.
- The Debtors Received Independent Counsel in Developing the KEIP. FTI Consulting Inc. (“*FTI*”) advised the Debtors regarding the KEIP. *See* Simms Declaration at ¶¶ 4, 6. As described in more detail in the Simms Declaration, FTI reviewed incentive programs utilized by comparable gold and precious metal mining companies and in comparable chapter 11 cases in connection with advising the Debtors. *See* Simms Declaration at ¶ 6. On these facts, the Debtors submit that they

have received sufficient counsel regarding the KEIP. *See Borders Grp.*, 453 B.R. at 477 (noting that a debtor receives sufficient counsel when it receives counsel from its retained consultants).

31. Based on the foregoing, the Debtors respectfully submit that the implementation of the KEIP is a proper exercise of the Debtors' business judgment and use of the Debtors' resources, is justified by the facts and circumstances of these chapter 11 cases and, therefore, satisfies the requirements of Bankruptcy Code section 503(c)(3). The KEIP will motivate the Key Employees to the ultimate benefit of all parties in interest in these chapter 11 cases and should be approved.

SATISFACTION OF BANKRUPTCY RULES 6004(a) and 6004(h)

32. To implement the foregoing successfully, the Debtors respectfully request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

NOTICE

33. Notice of this motion has been provided to the following parties, or, in lieu thereof, their counsel: (a) the Office of the United States Trustee for the District of Delaware; (b) Arent Fox LLP, as proposed lead counsel, and Polsinelli PC, as proposed Delaware counsel, to the Creditors Committee; (c) Susman Godfrey LLP, as proposed lead counsel, and Ashby & Geddes, PA, as proposed Delaware counsel, to the Equity Committee; (d) Stroock & Stroock & Lavan LLP, as lead counsel, and Young Conaway Stargatt & Taylor, LLP, as Delaware counsel, to the DIP Agent, DIP Lenders and Noteholder Ad Hoc Group; (e) Perkins Coie LLP, as lead counsel, and Womble Carlyle Sandridge & Rice, LLP, as Delaware counsel, to the indenture trustee under that certain Indenture, dated as of May 25, 2012; (f) Wachtell, Lipton, Rosen & Katz, as lead counsel, and Morris, Nichols, Arsht & Tunnell LLP, as Delaware counsel, to the

administrative agent under the Third Amended and Restated Credit Agreement, dated as of May 8, 2014 (the “*Credit Agreement*”); (g) Paul Hastings LLP, as counsel to the co-collateral agent under the Credit Agreement; and (h) all parties that, as of the filing of this motion, have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, for the reasons set forth herein and in the Jones Declaration and the Simms Declaration, the Debtors respectfully request that the Court enter an order granting (a) the relief requested in this motion and (b) such other and further relief as may be just, proper and equitable.

Wilmington, Delaware
Date: May 11, 2015

BLANK ROME LLP

By: /s/ Stanley B. Tarr

Stanley B. Tarr (No. 5535)
Bonnie Glantz Fatell (No. 3809)
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-and-

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*Co-Counsel to the Debtors and
Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
Allied Nevada Gold Corp., <i>et al.</i> , ¹	)	Case No. 15-10503 (MFW)
)	
	)	Jointly Administered
)	
Debtors.	)	Objection Deadline: May 26, 2015 at 12:00 p.m.
	)	(prevailing ET)
	)	Hearing Date: June 1, 2015 at 10:30 a.m.
	)	(prevailing ET)

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER (A)
AUTHORIZING AND APPROVING THE DEBTORS' KEY EMPLOYEE
INCENTIVE PROGRAM AND (B) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that, on May 11, 2015, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of an Order (A) Authorizing and Approving the Debtors’ Key Employee Incentive Program and (B) Granting Related Relief* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “**Bankruptcy Court**”).² A copy of the Motion is attached hereto.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be filed in writing with the Bankruptcy Court, 824 N. Market Street, 3rd Floor,

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Allied Nevada Gold Corp. (7115); Allied Nevada Gold Holdings LLC (7115); Allied VGH Inc. (3601); Allied VNC Inc. (3291); ANG Central LLC (7115); ANG Cortez LLC (7115); ANG Eureka LLC (7115); ANG North LLC (7115); ANG Northeast LLC (7115); ANG Pony LLC (7115); Hasbrouck Production Company LLC (3601); Hycroft Resources & Development, Inc. (1989); Victory Exploration Inc. (8144); and Victory Gold Inc. (8139). The corporate headquarters for each of the above Debtors are located at, and the mailing address for each of the above Debtors, except Hycroft Resources & Development, Inc., is 9790 Gateway Drive, Suite 200, Reno, NV 89521. The mailing address for Hycroft Resources & Development, Inc. is P.O. Box 3030, Winnemucca, NV 89446.

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

Wilmington, Delaware 19801, and served on and received by the undersigned counsel on or before **May 26, 2015 at 12:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that a hearing with respect to the Motion will be held on **June 1, 2015 at 10:30 a.m. (prevailing Eastern Time)** before the Honorable Mary F. Walrath, United States Bankruptcy Judge, in the Bankruptcy Court, 824 N. Market Street, 5th Floor, Courtroom #4, Wilmington, Delaware 19801.

IF YOU FAIL TO RESPOND TO THE MOTION IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR OPPORTUNITY FOR A HEARING.

Wilmington, Delaware
Date: May 11, 2015

BLANK ROME LLP

By: /s/ Stanley B. Tarr

Stanley B. Tarr (No. 5535)
Bonnie Glantz Fatell (No. 3809)
Michael D. DeBaecke (No. 3186)
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Co-Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: Allied Nevada Gold Corp., <i>et al.</i> , ¹ <div style="text-align: center;">Debtors.</div>)))))))	Chapter 11 Case No. 15-10503 (MFW) Jointly Administered Re: Docket No. _____
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**ORDER (A) AUTHORIZING AND APPROVING THE DEBTORS' KEY
EMPLOYEE INCENTIVE PROGRAM AND (B) GRANTING RELATED RELIEF**

Upon the motion (the “*Motion*”)² of the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”), pursuant to Bankruptcy Code sections 363(b) and 503(c) and Bankruptcy Rule 6004, seeking entry of an order (a) authorizing and approving the Debtors’ KEIP; and (b) granting related relief, all as further described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and consideration of the Motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the Motion and any objections filed in response thereto; and upon the record of the hearing and all proceedings

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Allied Nevada Gold Corp. (7115); Allied Nevada Gold Holdings LLC (7115); Allied VGH Inc. (3601); Allied VNC Inc. (3291); ANG Central LLC (7115); ANG Cortez LLC (7115); ANG Eureka LLC (7115); ANG North LLC (7115); ANG Northeast LLC (7115); ANG Pony LLC (7115); Hasbrouck Production Company LLC (3601); Hycroft Resources & Development, Inc. (1989); Victory Exploration Inc. (8144); and Victory Gold Inc. (8139). The corporate headquarters for each of the above Debtors are located at, and the mailing address for each of the above Debtors, except Hycroft Resources & Development, Inc., is 9790 Gateway Drive, Suite 200, Reno, NV 89521. The mailing address for Hycroft Resources & Development, Inc. is P.O. Box 3030, Winnemucca, NV 89446.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted as set forth herein.
2. The KEIP is approved in its entirety.
3. The Debtors are authorized, but not directed, to implement the KEIP, including by making payments to or on behalf of Key Employees upon the achievement of the goals set forth therein in an amount not to exceed \$1.396 million.
4. Any payment actually made by the Debtors to or on behalf of any Key Employee pursuant to the KEIP approved herein shall be final and shall not be subject to disgorgement.
5. Notwithstanding anything to the contrary in this Order, any payment made or to be made under this Order, and any authorization contained in this Order, shall be subject to the requirements imposed on the Debtors under any order(s) of this Court approving the Debtors' debtor in possession financing facility and use of cash collateral and any budget in connection therewith.
6. Notice of the Motion as provided therein shall be deemed good and sufficient and such notice satisfies the requirements of Bankruptcy Rule 6004(a) and the Local Rules.
7. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.
8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

9. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Wilmington, Delaware

Date: _____, 2015

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Jones Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
	)	Chapter 11
)	
Allied Nevada Gold Corp., <i>et al.</i> , ¹	)	Case No. 15-10503 (MFW)
)	
Debtors.	)	Jointly Administered
)	

**DECLARATION OF STEPHEN M. JONES IN
SUPPORT OF DEBTORS' MOTION FOR ENTRY OF AN
ORDER (A) AUTHORIZING AND APPROVING THE DEBTORS'
KEY EMPLOYEE INCENTIVE PROGRAM AND (B) GRANTING RELATED RELIEF**

Stephen M. Jones, being duly sworn, deposes and states:

1. I am the Executive Vice President, Secretary and Chief Financial Officer (“**CFO**”) of Allied Nevada Gold Corp. (“**ANV**”), and the CFO of all of the other above captioned debtors and debtors in possession (collectively with ANV, the “**Debtors**”). Based on my positions with the Debtors, I am familiar with the Debtors’ day-to-day operations, business and affairs.

2. I participated in the development of the Debtors’ proposed chapter 11 key employee incentive program (the “**KEIP**”), a program that would provide cash incentive payments to Key Employees based on the achievement of specified Strategic and/or Operational Goals.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Allied Nevada Gold Corp. (7115); Allied Nevada Gold Holdings LLC (7115); Allied VGH Inc. (3601); Allied VNC Inc. (3291); ANG Central LLC (7115); ANG Cortez LLC (7115); ANG Eureka LLC (7115); ANG North LLC (7115); ANG Northeast LLC (7115); ANG Pony LLC (7115); Hasbrouck Production Company LLC (3601); Hycroft Resources & Development, Inc. (1989); Victory Exploration Inc. (8144); and Victory Gold Inc. (8139). The corporate headquarters for each of the above Debtors are located at, and the mailing address for each of the above Debtors, except Hycroft Resources & Development, Inc., is 9790 Gateway Drive, Suite 200, Reno, NV 89521. The mailing address for Hycroft Resources & Development, Inc. is P.O. Box 3030, Winnemucca, NV 89446.

3. I submit this Declaration in support of the *Debtors' Motion for Entry of an Order (A) Authorizing and Approving the Debtors' Key Employee Incentive Program and (B) Granting Related Relief* (the "***Motion***").¹ Except as otherwise indicated, all statements set forth in this Declaration are based upon: my personal knowledge; information supplied to me by other members of the Debtors' management or the Debtors' professionals; my review of relevant documents; or my opinion based upon my experience and knowledge of the Debtors' operations and financial conditions.

THE KEIP

4. I believe that the 9 Tier 1 Employees have a significant impact on the Debtors' short-term operational performance and the Debtors' ability to achieve certain strategic goals. Further, I believe that the 86 Tier 2 Employees have an impact on the Debtors' short-term operational performance. Incentivizing the Key Employees to contribute to the Debtors' business efforts during the pendency of the chapter 11 cases is vital to the Debtors' business and restructuring efforts.

5. I played a pivotal role in formulating and negotiating the terms of the proposed KEIP. I believe that implementation of effective incentive plans is essential to maintaining and improving the Debtors' financial and operational performance and to achieving a restructuring that maximizes value for all stakeholders.

6. Accordingly, I believe that the Debtors have an immediate need to implement the KEIP to provide incentive opportunities that will enable the Debtors to maximize recoveries for all stakeholders. In my estimation, failure to implement the KEIP would jeopardize the Debtors'

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

prospects of an expedient and successful reorganization, create additional costs in hiring and training new Employees and risk undermining mine safety and efficiency.

7. Additionally, the Operational and Strategic Goals that comprise the KEIP are (i) consistent with, and are in fact harder to satisfy than, the metrics that comprised the Annual Cash Bonus Program², one of the Pre-Petition Employee Incentive Programs already approved by this Court, and (ii) consistent with the metrics that comprise the incentive programs utilized by comparable gold and precious metal mining companies. Specifically, in formulating the KEIP, I reviewed and analyzed incentive programs utilized by other mining companies, many of which utilize similar incentive programs and tie their awards to production, safety, environmental and cost metrics. Based on my review, I believe that the award amounts available under the KEIP are consistent with the incentive awards that other gold and precious metal mining companies pay to their key employees.

8. Moreover, I believe that the implementation of a short-term incentive program, such as the KEIP, is critical to ensure that Key Employees are properly motivated notwithstanding the expected short duration of the chapter 11 cases. Since the Petition Date, 5 of our 26 Employees at ANV and 44 of our 400 Employees at Hycroft Resources & Development, Inc. have resigned. The ability to earn incentive awards under the KEIP should motivate the Key Employees to achieve the Operational and Strategic Goals. If, in so doing, the KEIP also has the effect of slowing the departure of Key Employees, that would be a welcome development.

CONCLUSION

9. Based on my own analysis and business judgment and the advice provided to me by the Debtors' advisors, I believe that the proposed KEIP is (i) a modification of the Debtors'

² The comparable metrics from the 2014 Annual Cash Bonus Program are attached to the Motion as **Exhibit D**.

Annual Cash Bonus Program and (ii) reasonable and specifically targeted to achieve important goals during the chapter 11 cases. I believe that the KEIP will motivate Key Employees to maximize recoveries to the Debtors' stakeholders and ensure that the Debtors maintain a commitment to a safe and environmentally responsible workplace.

10. Moreover, the cost of the proposed KEIP was deliberately set in line with (a) the Annual Cash Bonus Program and (b) market norms for organizations comparable to the Debtors. Thus, the proposed KEIP comes at a modest cost that is far outweighed by the ongoing contributions that the Key Employees provide to the Debtors. In sum, I believe that, unless the proposed KEIP is approved, the Debtors will struggle to meet performance targets that are essential to an expeditious and successful emergence from chapter 11 and to maximize recoveries to stakeholders.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Date: May 11, 2015

/s/ Stephen M. Jones

Stephen M. Jones

Title: Executive Vice President, Secretary and Chief
Financial Officer of Allied Nevada Gold Corp.;
Chief Financial Officer of all the other Debtors

EXHIBIT C

Simms Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Allied Nevada Gold Corp., *et al.*,¹

Debtors.

)
)
)
)
)
)
)

Chapter 11

Case No. 15-10503 (MFW)

Jointly Administered

**DECLARATION OF STEVEN D. SIMMS IN
SUPPORT OF DEBTORS' MOTION FOR ENTRY OF AN
ORDER (A) AUTHORIZING AND APPROVING THE DEBTORS'
KEY EMPLOYEE INCENTIVE PROGRAM AND (B) GRANTING RELATED RELIEF**

Steven D. Simms, being duly sworn, deposes and states:

1. I am a Senior Managing Director at FTI Consulting Inc. ("**FTI**"). Based on my discussions with my colleagues and the Debtors, I am familiar with the Debtors' day-to-day operations, business and affairs.

2. I participated in the development of the Debtors' proposed chapter 11 key employee incentive program (the "**KEIP**"), a program that would provide cash incentive payments to Key Employees based on the achievement of specified Strategic and/or Operational Goals.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Allied Nevada Gold Corp. (7115); Allied Nevada Gold Holdings LLC (7115); Allied VGH Inc. (3601); Allied VNC Inc. (3291); ANG Central LLC (7115); ANG Cortez LLC (7115); ANG Eureka LLC (7115); ANG North LLC (7115); ANG Northeast LLC (7115); ANG Pony LLC (7115); Hasbrouck Production Company LLC (3601); Hycroft Resources & Development, Inc. (1989); Victory Exploration Inc. (8144); and Victory Gold Inc. (8139). The corporate headquarters for each of the above Debtors are located at, and the mailing address for each of the above Debtors, except Hycroft Resources & Development, Inc., is 9790 Gateway Drive, Suite 200, Reno, NV 89521. The mailing address for Hycroft Resources & Development, Inc. is P.O. Box 3030, Winnemucca, NV 89446.

3. I submit this Declaration in support of the *Debtors' Motion for Entry of an Order (A) Authorizing and Approving the Debtors' Key Employee Incentive Program and (B) Granting Related Relief* (the "***Motion***").¹ Except as otherwise indicated, all statements set forth in this Declaration are based upon: my personal knowledge; information supplied to me by members of FTI, members of the Debtors' management or the Debtors' professionals; my review of relevant documents; or my opinion based upon my experience and knowledge of the Debtors' operations and financial conditions.

THE KEIP

4. I advised the Debtors with respect to the terms of the proposed KEIP. I believe that implementation of effective incentive plans is essential to maintaining and improving the Debtors' financial and operational performance and to achieving a restructuring that maximizes value for all stakeholders.

5. Accordingly, I believe that the Debtors have an immediate need to implement the KEIP to provide incentive opportunities that will enable the Debtors to maximize recoveries for all stakeholders. In my estimation, failure to implement the KEIP would jeopardize the Debtors' prospects of an expedient and successful reorganization, create additional costs in hiring and training new Employees and risk undermining mine safety and efficiency.

THE KEIP METRICS

6. I consulted with Stephen M. Jones, the Debtors' Chief Financial Officer (the "***CFO***"), regarding the development of the Operational and Strategic Goals that comprise the KEIP. Based on our discussions and my review of the Debtors' 2014 Annual Cash Bonus Program, one of the Pre-Petition Employee Incentive Programs already approved by this Court, I

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

believe that the Operational and Strategic Goals that comprise the KEIP are (i) consistent with, and are in many respects harder to satisfy than, the metrics that comprised the Annual Cash Bonus Program, and (ii) consistent with the metrics that comprise the incentive programs utilized by comparable gold and precious metal mining companies. Specifically, based on my review and analysis of incentive programs utilized by other mining companies and discussions with other professionals at FTI that specialize in the mining industry, I believe that it is customary in the industry to tie employee incentive awards to production, safety, environmental and cost metrics. In addition, I have analyzed employee incentive programs implemented in other comparable chapter 11 cases. Based on my review of those cases and my prior experience, I believe that the award amounts available under the KEIP are consistent with the incentive awards that comparable chapter 11 estates pay to their employees. Furthermore, based on my prior experiences in comparable chapter 11 cases, I believe that it is customary for debtors to modify their pre-petition incentive programs to reflect appropriate goals and incentives during the pendency of the chapter 11 cases.

CONCLUSION


7. Based on my own analysis and business judgment and the advice provided to me by the Debtors and the Debtors' advisors, I believe that the proposed KEIP is (i) a modification of the Debtors' Annual Cash Bonus Program and (ii) reasonable and specifically targeted to achieve important goals during the chapter 11 cases.

8. Moreover, I believe that the cost of the proposed KEIP is in line with (a) the cost of the Annual Cash Bonus Program and (b) market norms for organizations comparable to the Debtors. Thus, the proposed KEIP comes at a modest cost that is far outweighed by the ongoing contributions that the Key Employees provide to the Debtors. In sum, I believe that, unless the

proposed KEIP is approved, the Debtors will struggle to meet performance targets that are essential to an expeditious and successful emergence from chapter 11 and to maximize recoveries to stakeholders.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Date: May 11, 2015



Name: Steven D. Simms
Title: Senior Managing Director
FTI Consulting Inc.

EXHIBIT D

2014 Annual Cash Bonus Program Metrics

Performance-Based Annual Cash Incentive Award Criteria for 2014

Criteria	Weighting and Measurement		Notes
Operations			
Sales measured in ounces of gold sold	20%	250,000 ounces	Performance between production targets will be interpolated
	12.5%	240,000 ounces	
	7.5%	230,000 ounces	
Adjusted Cash costs per ounce of gold sold	20%	\$850/ounce	Performance between cost targets will be interpolated
	12.5%	\$837.5/ounce	
	7.5%	\$825/ounce	
Non-expansion Capital expenditures	20%	Under \$13.5 million	Performance between the expenditure targets will be interpolated
	12.5%	under \$14.25 million	
	7.5%	under \$15 million	
Feasibility Study			
Successful completion of an updated feasibility study	25%	Prior to August 31, 2014	Performance between the target dates will be interpolated
	12.5%	Prior to September 30, 2014	
	5%	In 2014	
Financing			
Successful financing to resume the sulfide expansion	25%	fully funded	
	10%	not fully funded	
Health, Safety and Environment			
	10%	Zero lost time accidents	
	5%	0 to 2 lost time accidents	
	10%	Zero reportable environmental incidents resulting in regulatory orders or fines	
	5%	0 to 2 reportable environmental incidents resulting in a regulatory order or fines	
Individual Goals	up to 20%	Completion of personal goals	

EXHIBIT E

Debtors' Recent Operational Results

Operational Metrics	As Proposed in the Motion	Actual 2014
	Q2 2015 Goal	Average (per quarter) 2014
Total Tons Mined	25,412,800	24,596,152
Total Ounces of Cyanide Placed on Leach Pads	77,291	71,419
Solution Flow to Leach Pads (average gallons per minute)	29,000	26,201
Solution Flow Through Process Plants (average gallons per minute)	25,000	19,932
Cost/Ton Mined (average)	\$1.50	\$1.51
Lost Time Accidents	0	2
Reportable Incidents resulting in both Orders and fines	0	0