

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:))	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹))	Case No. 19-12239 (CSS)
Debtor.))	

Objection Deadline: December 10, 2019 at 4:00 p.m. (ET)
Hearing Date: December 17, 2019 at 11:00 a.m. (ET)

**MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTOR TO PAY AND HONOR
ORDINARY COURSE OBLIGATIONS UNDER
EMPLOYEE BONUS PLANS AND GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession (the “Debtor”) hereby moves this Court (this “Motion”) for entry of an order, in substantially the form attached hereto as **Exhibit A**, authorizing the Debtor to honor, in the ordinary course, obligations under an annual employee bonus plan (the “Annual Bonus Plan”) and a deferred employee bonus plan (the “Deferred Bonus Plan” and together with the Annual Bonus Plan, the “Bonus Plans”) and granting related relief. The Debtor also seeks authority to continue a dividend reinvestment program (the “DRIP”) for all eligible employees.² The Bonus Plans include up to four insiders of the Debtor.

In further support of this Motion, the Debtor respectfully states as follows:

¹ The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

² The DRIP should have been included in the Debtor’s first day employee benefits motion, but was inadvertently omitted.



Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105 and 363 of title 11 of the United States Code (the “Bankruptcy Code”).

Background

A. The Debtor’s Bankruptcy Filing

3. On October 16, 2019 (the “Petition Date”), the Debtor commenced this case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. The Debtor continues in the possession of its property and continues to operate and manage its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. No trustee or examiner has been appointed in the Debtor’s chapter 11 case.

6. On October 29, 2019, the United States Trustee appointed the Official Committee of Unsecured Creditors (the “Committee”).

B. The Debtor’s Employees

7. As of the Petition Date, the Debtor employs approximately 76 employees, of whom approximately 55 are salaried employees and approximately 21 are hourly employees (collectively, the “Employees”).

8. The Employees perform critical functions for the Debtor as a global investment and asset manager in the areas of public equities, real estate, private equity, structured credit, and sector and region-specific assets. The Debtor's Employees hold a variety of positions at all levels of the Debtor's operations, including, without limitation, finance, accounting, legal, human resources, portfolio management, and administrative levels.

9. As is standard in the money management industry in which the Debtor operates and competes, a substantial portion of the compensation payable to the Employees consists of bonus compensation. The Debtor's Employees accept much reduced base salaries in consideration of the bonuses that will be paid to them. If the Debtor was unable to pay ordinary course bonuses to all of its eligible Employees, including insiders, the Debtor would likely face a mass exodus of Employees and the morale of its Employees would be severely jeopardized, putting the Debtor's business and restructuring efforts into substantial risk. For instance, the Debtor cannot continue to perform investment management services or to maximize the value of its proprietary and client assets without the services of its qualified and experienced Employees, adversely impacting creditor recoveries. Simply put, the Debtor would be unable to operate in the ordinary course if it is not permitted to continue to honor and pay bonuses to its Employees in the ordinary course.

10. The Debtor's founders, James Dondero and Mark Okada, are not recipients of the proposed payments under the Bonus Plans for purposes of this Motion. No equity holder in the Debtor would receive any payment under the Bonus Plans subject to this Motion.

C. The Debtor's Ordinary Course Annual Bonus Plan

11. In 2005, the Debtor developed the Annual Bonus Plan initially referred to as the 2005 HCMLP Bonus Plan. Under the Annual Bonus Plan, all of the Debtor's Employees are eligible for a yearly bonus payable in up to four (4) equal installments, each payable at six month intervals on the last business days of February and August. For example, a cash bonus for each eligible Employee for work performed in calendar year 2018 was awarded in February 2019 pursuant to which installments are payable as follows: February 2019 (part I) (paid prepetition), August 2019 (part II) (paid prepetition), February 2020 (part III – covered by this Motion), and August 2020 (part IV – covered by this Motion). The purpose of the Annual Bonus Plan is to attract the highest quality employees and to incentivize success. Bonuses are awarded on an individualized basis following annual performance reviews and are designed to reward good work and team players. In practice, the Annual Bonus Plan is a necessary component of each Employee's compensation and amounts to payment in lieu of a higher fixed salary.

12. The Debtor estimates that it owes approximately \$5.8 million to approximately 47 Employees for prepetition amounts awarded under the Annual Bonus Plan in February 2019, consisting of approximately \$2,976,917 owed in February 2020 (part III) and approximately \$2,856,250 owed in August 2020 (part IV). Of this amount, approximately \$2.1 million would be payable to no more than four insider Employees.

13. The Annual Bonus Plan amounts are fully accrued liabilities on the Debtor's books, subject to each Employee remaining employed with the Debtor when the

remaining payments are due and payable.³ However, the Annual Bonus Plan is geared towards continuous performance at the highest level possible by each Employee. Payments under the Annual Bonus Plan are staggered over a period of two years and no awards are guaranteed. If an Employee does not meet expectations at any time, he or she can be terminated by the Debtor, in which case any awards payable to such Employee under the Annual Bonus Plan would be forfeited. Even if an Employee is terminated without cause or laid off for any reason, whether in such Employee's control or not, then any awards payable to such Employee under the Annual Bonus Plan would be forfeited. Hence, in order to be entitled to any payments under the Annual Bonus Plan that may be due and owing in February and August 2020, each Employee must continue to perform on a postpetition basis for the Debtor in a manner that warrants payment of such compensation.

14. The Debtor believes that the amounts due and owing under the Annual Bonus Plan to Employees in February and August 2020 are reasonable and appropriate in light of comparable market standards and should be approved by this Court.

D. The Debtor's Ordinary Course Deferred Bonus Plan

15. In approximately 2013, the Debtor implemented the Deferred Bonus Plan to further compensate Employees for extraordinary work. Under the Deferred Bonus Plan, the Debtor's Employees are generally awarded shares of a designated publicly traded stock, which do not vest until 39 months later. The Debtor typically holds the stock until it is fully vested with the Employee. Upon vesting, the Employee may receive the stock or its liquidation value.

³ The Bonus Plan also provides for payment of outstanding bonuses to an Employee (or his or her estate) within 75 days in the event of an Employee's death or disability.

Payments under the Deferred Bonus Plan are only available to currently employed Employees of the Debtor as of the date of vesting. Although all Employees are technically eligible for the Deferred Bonus Plan, it is a less common form of compensation reserved for outstanding Employees. Typically, approximately 40-50 of the Debtor's Employees, including insiders, participate in the Deferred Bonus Plan.

16. Like the Annual Bonus Plan, the Deferred Bonus Plan motivates future performance by each Employee. Payments under the Deferred Bonus Plan are delayed by 39 months and no awards are guaranteed. If an Employee is terminated by the Debtor, with or without cause, any awards payable to such Employee under the Deferred Bonus Plan would be forfeited. Each Employee must therefore continue to perform on a postpetition basis for the Debtor in a manner that warrants payment of such compensation.

17. The Deferred Bonus Plan accrues liabilities on a quarterly basis (3/39) on the Debtor's books. For example, amounts awarded to Employees in February 2017 for work performed during calendar year 2016 under the Deferred Bonus Plan will fully vest in May 2020. The Debtor estimates that it owes approximately \$4,400,000 for prepetition amounts awarded in 2017 under the Deferred Bonus Plan that will vest in May 2020. Of this amount, approximately \$2.8 million would be payable to no more than four insider Employees. These amounts are subject to further fluctuation based on the price of the designated stock as well as reductions based on forfeitures.

18. Separately, the Debtor has an ordinary course profit sharing plan for Employees and reserves the right to seek approval of such plan at a later date. The Debtor also reserves the right to seek approval of a key employee incentive plan for insiders or a key

employee retention plan for non-insiders for performance in calendar year 2019 and beyond.

E. The Debtor's Ordinary Course Dividend Reinvestment Program

19. Both the Employees, including insiders, and the Debtor itself participate in the DRIP, which is considered another benefit plan. NexPoint Advisors ("NPA"), a non-Debtor affiliate of the Debtor, is the sponsor of the plan.

20. The two investment funds in the DRIP are NexPoint Strategic Opportunities Fund ("NHF") (which pays monthly dividends) and NexPoint Residential Trust ("NXRT") (which pays quarterly dividends). NHF and NXRT are managed by NPA or a sub-advisor thereof.

21. The DRIP works as follows: If an Employee purchases new shares in either of NHF and/or NXRT, the Debtor funds a 15% gross-up bonus. The Debtor also funds the 15% gross-up on all dividends reinvested.⁴ Employees do not purchase new shares often, but all Employees reinvest dividends. The cost of the DRIP to the Debtor is approximately \$11,300 per month for 2 of 3 months per quarter and approximately \$17,700 for the third month of the quarter, or an average of \$13,400 per month. The Debtor funds its gross-up payments monthly. The DRIP is managed by a third party, the contributions made by the Debtor are included on the Employees' W-2 forms as income, and the individual investment accounts are in the name of each Employee.

22. Separately, the Debtor also participates in the DRIP. Although the Debtor is no longer purchasing new shares, it is still on dividend reinvestment. Its quarterly dividend for

⁴ The Debtor does not fund any amounts in the DRIP program, including gross-ups, for employees of non-Debtor affiliates.

the first and second month of each quarter is approximately \$78,000 and for month 3 is approximately \$165,000. NPA pays the 15% gross-up for the Debtor's purchases/reinvestments.

23. The Debtor seeks to continue the DRIP in the ordinary course, including any component of the DRIP that may have accrued prepetition, which the Debtor does not expect to exceed \$30,000.

Requested Relief

24. By this Motion, the Debtor requests authority to continue to honor and pay amounts due to Employees (including up to four insiders) under the Bonus Plans in the ordinary course.

25. This Motion is made pursuant to sections 105(a) and 363 of the Bankruptcy Code on the grounds that Employee compensation under the Bonus Plans is critical to the Debtor's ongoing operations and any threat of nonpayment under such plans would have a potentially catastrophic impact on the Debtor's reorganization efforts. Absent authority to honor the Bonus Plans in the ordinary course, the Debtor would be unable to sustain operations or maximize the value of its vast portfolio of assets, as Employees would likely abandon the Debtor.

26. The bonus payments sought herein continue to be earned on a postpetition basis. Any Employee who does not perform to expectations can be terminated at any time, with or without cause, which would have the effect of forfeiting any right of such Employee to compensation under the Bonus Plans. Further, the awards under the Bonus Plans do not represent an "extra" payment to Employees, but rather are an integral part of each Employee's compensation. Employees accept reduced salaries in exchange for bonuses. The bonus

payments sought in this Motion represent a substantial portion of each Employee's cash compensation. Through this Motion, the Debtor seeks to protect Employee morale and avoid unmanageable Employee turnover, while continuing its ordinary business practices during this reorganization process.

27. In addition, the Debtor seeks authority to continue the DRIP in the ordinary course for all Employees, including insiders. The Debtor estimates that prepetition amounts that may be due and owing under the DRIP will not exceed \$30,000.

Authority for the Requested Relief

A. The Debtor's Bonus Plans Should Be Authorized Under Sections 105(a) and 363 of the Bankruptcy Code

28. Section 105(a) of the Bankruptcy Code provides, in pertinent part, that a court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor in possession to use property of the estate other than in the ordinary course of business after notice and a hearing. By contrast, section 363(c)(1) of the Bankruptcy Code authorizes a debtor in possession to use property of the estate in the ordinary course of business without notice and hearing.

29. Delaware bankruptcy courts, including this Court, have approved employee bonus plans that are in the ordinary course of business and based on sound business judgment pursuant to Bankruptcy Code section 363(c)(1). *See In re Blitz U.S.A., Inc.*, 475 B.R. 209 (Bankr. D. Del. 2012) (bonus plan payable to insiders approved as an ordinary course transaction); *In re Global Home Products, LLC*, 369 B.R. 778, 787 (Bankr. D. Del. 2007)

(management incentive plan and sales bonus plan approved as consistent with the ordinary course of business based on sound business judgment); *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 796 (Bankr. D. Del. 2007) (same); *In re Forever 21, Inc.*, Case No. 19-12122 (KG) (Bankr. D. Del. Nov. 13, 2019) [Docket No. 426] (authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto on a postpetition basis including non-insider incentive program); *In re Fred's, Inc.*, Case No. 19-11984 (CSS) (Bankr. D. Del. Sept. 26, 2019) [Docket No. 189] (approving payment of prepetition amounts accrued under non-insider incentive plan); *In re PES Holdings, LLC*, Case No. 19-11626 (KG) (Bankr. D. Del. Aug. 20, 2019) [Docket No. 221] (authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto on a postpetition basis including non-insider incentive program).

30. The Third Circuit outlined a two-pronged inquiry regarding whether a transaction is in the ordinary course of business in *In re Roth American, Inc.*, 975 F. 2d 949, 952-53 (3d Cir. 1992). Under the analysis of *Roth American*, the court must look to (1) whether the transaction is the “sort commonly undertaken by companies in the industry” (deemed the horizontal test) and (2) whether the transaction “subjects a creditor to economic risk of a nature different from those he accepted when he decided to extend credit” (deemed the vertical test). *Id.* (citations omitted). As applied to employee bonus plans, courts focus on whether the program is consistent with industry standards and otherwise beneficial to the debtor, and whether the plan differs from the debtor’s prepetition business practices.

31. In this case, the Debtor’s Annual Bonus Plan has been in place since 2005 and the Deferred Bonus Plan has been in place since 2013. The Debtor merely seeks to continue

to honor its obligations under the Bonus Plans in 2020 in the ordinary course. The Bonus Plans are of the type common within the money management industry and consistent with industry practice that Employees receive reduced salaries with the understanding that their bonus compensation will constitute a substantial portion of their compensation. The Bonus Plans are reasonable and within market norms. The Bonus Plans serve to incentivize the Debtor's Employees going forward and to compensate them for their hard work. The Employees should not be penalized by the circumstances of the bankruptcy and the fact that the bonus payments are payable in installments or deferred until postpetition. Accordingly, the Debtor requests authority to honor its obligations under the Bonus Plans in the ordinary course and consistent with prior practices.

32. Sections 105(a) and 363 of the Bankruptcy Code also provide a sound business basis to allow the Debtor to continue the DRIP in the ordinary course, including satisfaction of any accrued prepetition obligations thereunder. The DRIP is another ordinary course employee benefit that the Debtor should be permitted to honor in order to preserve employee morale.

B. Payments Under the Debtor's Bonus Plans Are Not Limited by Section 503(c) of the Bankruptcy Code

33. Section 503(c) of the Bankruptcy Code prohibits certain transfers to insiders and also certain transfers outside the ordinary course of business. Specifically, section 503(c)(1) provides that: "[T]here shall neither be allowed, nor paid – a transfer made to, or an obligation incurred for the benefit of, *an insider of the debtor* for the purpose of inducing such person to remain with the debtor's business [absent certain stringent exceptions]." 11 U.S.C. §

503(c)(1) (emphasis added). Section 503(c)(3) further provides that: “[T]here shall neither be allowed, nor paid – other transfers or obligations that are *outside the ordinary course of business* and not justified by the facts and circumstances of the case including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.” 11 U.S.C. § 503(c)(3) (emphasis added).

34. In *In re Nellson Nutraceutical, Inc.*, this Court concluded that section 503(c)(1) applies to an ordinary course bonus plan that proposes to compensate insiders. 369 B.R. at 800-801. However, this Court interpreted section 503(c)(1) as limited to “‘a transfer made to . . . an insider of the debtor for the [*primary*] purpose of inducing such person to remain with the debtor’s business.’” *Id.* at 802 (emphasis added). Recognizing that all bonus plans have some retentive effect, this Court concluded that an after-the-fact modification of an ordinary course bonus plan in *Nellson Nutraceutical* was for the primary purpose of motivating employees and, thus, the limitations in section 503(c)(1) were not applicable. *Id.* at 802-803. The employees in that case had done a “good job” and it made “good business sense” to pay them the requested bonuses, especially since modification of the bonus plan was consistent with prepetition practice. *Id.*

35. Here, the same rationale holds true. The Debtor’s Bonus Plans, as they relate to insiders, are not primarily retentive. The Bonus Plans are designed to motivate the Debtor’s Employees, including insiders, to achieve the best possible results for the company as a whole. If an Employee does not perform up to expectations, he or she can be terminated at any time and, as a result of such termination, any rights that such Employee may have had to compensation under the Bonus Plans would be forfeited. An Employee can even be terminated

without cause, such as poor performance by the Debtor as a whole, and such Employee would have no right whatsoever to any payment under the Bonus Plans. Although the amounts owed to insiders under the Bonus Plans were awarded prepetition, they are deferred over a period of years in order to continue to motivate Employees to achieve the highest possible level of performance. The Bonus Plans are anything but mere retention plans – they are focused on incentivizing continuous optimum performance by each Employee and reward each Employee, just like in the *Nellson Nutraceutical* case, for doing a “good job” on a postpetition basis. Hence, section 503(c)(1) of the Bankruptcy Code does not apply to payments under the Bonus Plans.

36. The Bonus Plans are also entirely ordinary course and completely consistent with the Debtor’s prepetition practice such that the limitations of section 503(c)(3) of the Bankruptcy Code also do not apply. *See, e.g., In re Blitz*, 475 B.R. at 214 (rejecting argument by creditors’ committee that 503(c)(3) standard applied to payments under bonus plan, requiring justification as opposed to business judgment; bonus plan deemed ordinary course transaction); *In re Nellson Nutraceutical, Inc.*, 369 B.R. at 800 (same; plain meaning demonstrates 503(c)(3) applicable only to transfers or obligations outside the ordinary course of business). Payments under the Bonus Plans should be governed by section 363 of the Bankruptcy Code.

C. Payments Under the Debtor’s Bonus Plans Are Supported by Sections 105(a) and 363 of the Bankruptcy Code Pursuant to the Necessity of Payment Doctrine

37. The relief requested in this Motion is also supported by the well-established “necessity of payment” doctrine.⁵ The “necessity of payment” doctrine, which has been embraced by the United States Court of Appeals for the Third Circuit, “teaches no more than, if payment of a claim which arose prior to reorganization is essential to the continued operation of the business during reorganization, payment may be authorized even if it is made out of corpus.” *In re Lehigh & New England Rwy. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *see also Pension Benefit Guarantee Corp. v. Sharon Steel Corp. (In re Sharon Steel Corp.)*, 159 B.R. 730, 736-37 (Bankr. W.D. Pa. 1993) (embracing “necessity of payment” doctrine and citing *Lehigh & New England Rwy. Co.* with approval for payment of prepetition wages). The necessity of payment doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).

38. In *Ionosphere Clubs, Inc.*, the bankruptcy court permitted Eastern Air Lines to pay its current employees’ prepetition wages, salaries, medical benefits, and business expense claims, while denying payment to those who were striking. The court relied on its equitable powers under sections 105(a) and 363(b) of the Bankruptcy Code and, in particular, the

⁵ The doctrine was first articulated by the Supreme Court in railroad reorganization cases, *see Miltenberger v. Logansport, C. & S.W. R. Co.*, 106 U.S. 286 (1882), and it has been held to be equally applicable to non-railroad debtor cases. *See, e.g., Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945); *In re Gulf Air, Inc.*, 112 B.R. 152, 153 (Bankr. W.D. La. 1989).

“necessity of payment” doctrine, to authorize such payments, recognizing that the debtor had to make the payments in order to retain its current employees and maintain positive employee morale – two factors which were critical to the rehabilitation of the operating debtor. *Id.* at 177 (*citing* H.R. Rep. No. 595 95th Cong. 1st Sess. 16 (1977)). The court held that the debtor needed to articulate a business justification beyond the appeasement of major creditors to use its cash outside of the ordinary course of business. The debtor did so by demonstrating that it needed to pay prepetition claims owed to currently working employees in order to protect the business, reorganize the business, and maintain positive employee morale. *Id.* at 175.

39. In this case, the Debtor needs to continue to pay the amounts that are due under the Bonus Plans in 2020 in order to maintain its operations and maintain critical Employee morale. Absent a commitment to honor these obligations, the Debtor believes that it likely will face a mass exodus of Employees and its business would grind to a halt. Payments under the Bonus Plans are therefore critical to honoring the Debtor’s commitment to its Employees for their ongoing performance for the Debtor and essential to a successful reorganization.

40. Similarly, the “necessity of payment” doctrine supports approval of the payment of prepetition amounts under the DRIP, which are not expected to exceed \$30,000. The DRIP is another employee benefit program for the benefit of the Employees, including insiders. The Debtor believes that continuance of the DRIP is necessary in order to maintain Employee morale and to avoid any negative impact on the Employees’ regular benefit programs as a result of the ongoing bankruptcy proceedings.

41. The Debtor expects to have sufficient liquidity to continue to honor the Bonus Plans and the DRIP to the extent described herein in the ordinary course of business.

Nothing contained in this Motion, however, shall constitute a request for authority to assume any agreements, policies, or procedures relating to any Employee obligations or benefits.

Notice

42. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the District of Delaware; (c) counsel to the Committee; (d) the Debtor's principal secured parties; and (e) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests that this Court enter an order, substantially in the form attached hereto, granting the relief requested herein and such other and further relief as this Court deems appropriate.

Dated: November 26, 2019

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

Richard M. Pachulski (CA Bar No. 62337)

Jeffrey N. Pomerantz (CA Bar No.143717)

Ira D. Kharasch (CA Bar No. 109084)

Maxim B. Litvak (CA Bar No. 215852)

James E. O'Neill (DE Bar No. 4042)

919 North Market Street, 17th Floor

Wilmington, DE 19899 (Courier 19801)

Telephone: (302) 652-4100

Facsimile: (302) 652-4400

E-mail: rpachulski@pszjlaw.com

jpomerantz@pszjlaw.com

ikharasch@pszjlaw.com

mlitvak@pszjlaw.com

joneill@pszjlaw.com

*Proposed Counsel for the Debtor
and Debtor in Possession*

EXHIBIT A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:))	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹))	Case No. 19-12239 (CSS)
Debtor.))	Related to Docket No. ____

**ORDER AUTHORIZING THE DEBTOR TO PAY AND HONOR
ORDINARY COURSE OBLIGATIONS UNDER
EMPLOYEE BONUS PLANS AND GRANTING RELATED RELIEF**

This matter coming before the Court on the *Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief* (the “Motion”),² filed by the above-captioned debtor and debtor in possession (the “Debtor”); the Court having reviewed the Motion and having heard the statements of counsel regarding the relief requested in the Motion at a hearing before the Court (the “Hearing”); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409, (d) notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing that

¹ The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

² Capitalized terms used herein and not otherwise defined shall have the same meaning as in the Motion.

the relief requested is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on the terms set forth herein.
2. The Debtor is authorized to pay or continue to honor all sums due to Employees in the ordinary course under the Bonus Plans, consisting of the Annual Bonus Plan and the Deferred Bonus Plan.
3. The Debtor is authorized to continue the DRIP in the ordinary course, including any accrued prepetition amounts thereunder in an amount not to exceed \$30,000.
4. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.
5. Nothing contained in the Motion or this Order (a) shall constitute a request for authority to assume any agreements, policies or procedures relating to the Debtor's employee obligations and benefits; (b) shall be deemed an admission by the Debtor that any employee obligations and benefits will in fact be continued, honored or paid; or (c) is intended to or shall convert any prepetition claim to an administrative claim against the Debtor's estate.

6. Notwithstanding the applicability of Fed. R. Bankr. P. 6004(g), 7062, 9014, or other rule, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: December ____, 2019

Honorable Christopher S. Sontchi
United States Bankruptcy Judge

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the response or objection upon: (i) proposed counsel for the Debtor: Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, Wilmington, DE 19801, Attn: James E. O'Neill, Esq. (joneill@pszjlaw.com) and Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067, Attn: Jeffrey N. Pomerantz, Esq. (jpomerantz@pszjlaw.com); and (ii) the Office of the United States Trustee: 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Jane M. Leamy, Esq. (jane.m.leafy@usdoj.gov).

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE RELIEF SOUGHT IN THE MOTION WILL BE HELD ON **DECEMBER 17, 2019 AT 11:00 A.M. (EASTERN TIME) BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI, CHIEF UNITED STATES BANKRUPTCY COURT JUDGE, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.**

Dated: November 26, 2019

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

Richard M. Pachulski (CA Bar No. 62337)

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Maxim B. Litvak (CA Bar No. 215852)

James E. O'Neill (DE Bar No. 4042)

919 North Market Street, 17th Floor

P.O. Box 8705

Wilmington, DE 19899-8705 (Courier 19801)

Telephone: (302) 652-4100

Facsimile: (302) 652-4400

E-mail: rpachulski@pszjlaw.com

jpomerantz@pszjlaw.com

ikharasch@pszjlaw.com

mlitvak@pszjlaw.com

joneill@pszjlaw.com

Proposed Counsel for the Debtor and Debtor in
Possession