NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 16-3745, 16-3746 & 17-1513

In re: ALLIED NEVADA GOLD CORP., et al., Debtors

BRIAN TUTTLE,
Appellant

On Appeal from the United States District Court
for the District of Delaware
(D.C. Nos. 1-15-cv-00946, 1-15-cv-00949, and 1-16-cv-00058)
District Judge: Hon. Sue L. Robinson

Submitted Under Third Circuit LAR 34.1(a)
March 12, 2018

Before: JORDAN, KRAUSE, and GREENBERG, *Circuit Judges*

(Filed: March 27, 2018)

OPINION*

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* This disposition is not an opinion of the full court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

JORDAN, *Circuit Judge.*

Brian Tuttle, Jordan Darga, and Stoyan Tachev (collectively, the "Appellants"),[1] former stockholders of Allied Nevada Gold Corporation (together with its affiliated co-debtors and Appellees, "Allied Nevada"), challenge the District Court's conclusion that their bankruptcy appeals are equitably moot. We will affirm.

I. BACKGROUND[2]

A. Allied Nevada's Bankruptcy

The Appellants hold now-cancelled stock in Appellee Allied Nevada, which, before it declared bankruptcy, was a publicly traded company producing gold and silver. On March 10, 2015 (the "Petition Date"), Allied Nevada filed a voluntary petition for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware. As of the Petition Date, it had approximately $340 million of secured debt, and another $350 million of unsecured debt. According to an analysis by its financial advisor, Moelis & Company LLC, Allied Nevada's estimated value as a going concern following reorganization was projected to be between $200 and $300 million. Moelis's

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[1] One of the consolidated appeals to the District Court from the Bankruptcy Court was captioned *Ad Hoc Committee of Shareholders v. Allied Nevada Gold Corp., et al.*, No. 15-946-SLR, and it did not individually name the Appellants as parties. Because their ad hoc committee was never officially recognized, *see infra* n.6 and accompanying text, we treat that appeal, and the one before us, as having been filed by the three Appellants individually.

[2] The facts are recounted in detail in the District Court's September 15, 2016, and February 10, 2017, opinions dismissing Appellants' bankruptcy appeals. Because we write primarily for the parties, we recite only the facts pertinent to this consolidated appeal. Except where indicated, those facts are undisputed.

valuation left stockholders out of the money by a large margin. Thus, if liquidated, Allied Nevada's equity holders, as residual claimants, stood to recover nothing.

Prior to filing for bankruptcy, Allied Nevada had negotiated a restructuring and support agreement with certain lenders representing 100% of its funded secured debt and approximately 67% of its unsecured debt. During the bankruptcy, it failed to meet some of the covenants and milestones in that agreement, but it was able to successfully renegotiate an amended agreement.

Additional stakeholders participated in the bankruptcy proceedings, including two statutory committees appointed under 11 U.S.C. § 1102, one to represent Allied Nevada's unsecured creditors (the "Creditors Committee") and the other to represent its equity holders (the "Equity Committee"). Those committees took discovery, conducted independent valuation analyses, investigated potential claims, and negotiated with Allied Nevada and other stakeholders to reach a consensual reorganization plan. Also participating, through separate counsel, was a committee of noteholders, which included certain hedge funds that ultimately agreed to fund an Exit Facility for Allied Nevada.[3]

In mid-August of 2015, Allied Nevada announced an agreement in principle (the "Global Settlement") with its major stakeholders, including the Creditors Committee and

[3] "Exit Facility Commitment," as defined in the reorganization plan, "means the several ... commitments from the Exit Facility Lenders ... to purchase the New Second Lien Convertible Notes" up to $80 million. (JA at 164.) The "Exit Facility Lenders" included Aristeia Capital LLC, Highbridge Capital Management, LLC, Mudrick Capital Management, LP, USAA Asset Management, Whitebox Advisors LLC and Wolverine Asset Management LP, and their respective affiliates. (JA at 164.) With the Bankruptcy Court's approval, the Exit Facility Lenders, among others, also provided Allied Nevada with a $78 million debtor-in-possession credit facility to help it meet its financial obligations during the bankruptcy proceedings.

the Equity Committee. On August 27, 2015, Allied Nevada filed a final proposed reorganization plan and disclosure statement, which reflected the Global Settlement. That plan proposed the following recovery: (1) secured creditors would receive a distribution of new secured debt in Allied Nevada; (2) unsecured creditors would receive options, with the right to receive a cash distribution or new common stock in Allied Nevada; and (3) equity security holders would receive new warrants that would allow them to purchase, as a class, up to 17.5% of Allied Nevada's outstanding new common stock.

Meanwhile, a few days prior to the Global Settlement, Tuttle, proceeding pro se, filed a motion to appoint an independent examiner to investigate potential claims against Allied Nevada. He also sought discovery. Allied Nevada, the Creditors Committee, and the committee of noteholders all objected to Tuttle's motion for appointment of an examiner.

The Equity Committee also submitted a response, stating that it had considered the allegations in Tuttle's motion but found no colorable claims giving rise to the equitable disallowance for any creditor's claim. The Committee thus advised individual stockholders, including Tuttle, that they should consult an attorney to advise them on claims allegedly owned only by those stockholders, as individuals. It also represented that it had "weighed [Moelis's] valuation analysis, operational analysis, and analysis of certain potential claims in negotiating the terms of the settlement that is embodied in the Consensual Plan of reorganization" before the Court, and concluded that the proposed settlement "provide[d] existing equity holders with the best opportunity for a recovery

given [Allied Nevada's] current circumstances." (JA at 364.) The Bankruptcy Court held a hearing on Tuttle's motion and denied it.

The Bankruptcy Court ultimately approved Allied Nevada's disclosure statement, and a confirmation hearing was set for October 6, 2015.[4] The Court also granted Tuttle access to the discovery materials that had been made available to the Creditors Committee and the Equity Committee, on condition that he sign the same confidentiality agreement executed by the representatives of those committees. Tuttle did not return an executed confidentiality agreement until five days prior to the confirmation hearing.

Tuttle objected to Allied Nevada's proposed reorganization plan, arguing that it undervalued Allied Nevada and that equity holders were entitled to a greater recovery. Tachev filed a brief in support of Tuttle's objection. Darga also filed an objection. Importantly, none of the Appellants filed a motion to stay.

During the October 6, 2015, confirmation hearing, Allied Nevada presented its proposed reorganization plan. Tuttle and Darga participated in the hearing, and the Bankruptcy Court permitted them to cross-examine witnesses and argue their objections. They took issue with various aspects of Allied Nevada's financial statements and Moelis's valuation analysis, and also raised allegations of fraud and mismanagement; but

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[4] Tuttle, holding himself to be the chairman of an ad hoc committee of equity security holders, had filed an objection to Allied Nevada's notice of hearing on its proposed disclosure statement. *See supra* n.1, and *infra* n.6. At a hearing on the disclosure statement, Tuttle argued that Allied Nevada had not negotiated with an ad hoc committee, and that the stockholders' proposed recovery under the plan was inadequate. The Court overruled the objection but informed Tuttle of his right to object to the substance of the plan at confirmation.

neither proposed an alternative enterprise valuation analysis or proffered any new evidence or witnesses to substantiate their objections. During argument, Tuttle asked the Court to stay the confirmation hearing, which the Court denied as an untimely motion.

In an order dated October 8, 2015, the Bankruptcy Court confirmed the reorganization plan over the Appellants' objections. It found "no evidence that the plan itself was not proposed in good faith"; instead, it found that the plan was the product of "negotiation[s] among numerous parties, all of whom had different interest[s]," including Allied Nevada itself, the secured lenders, the Creditors Committee, and the Equity Committee "as a fiduciary representative for all shareholders." (JA at 635.) The Court accepted Moelis's valuation analysis, which it found to be "reasonable, persuasive, credible and accurate" and "not ... controverted by other persuasive evidence[.]" (JA at 699-700.) Finally, although a majority of Allied Nevada's stockholders had voted to reject the plan, the Equity Committee's conclusion favoring the plan remained. The Court concluded that the reorganization plan was fair to the stockholders – the most junior class receiving a recovery – and that it provided more than they would have received in a liquidation. Two weeks later, the plan was consummated and Allied Nevada emerged from Chapter 11 as a privately-held company.

A few months later, the Bankruptcy Court held a hearing to address outstanding motions. Tuttle and Darga both participated and argued various motions related to requests for standing to prosecute and to appoint an independent examiner, additional discovery motions, expense reimbursement, and a written motion to stay, filed the day

before the plan's effective date.[5] In a January 22, 2016, omnibus order (the "Omnibus Order"), the Court denied those motions.

B. The Consolidated Appeals

The Appellants filed multiple appeals, which were consolidated into two cases before the United States District Court for the District of Delaware. In the first, Tuttle sought, among other things, reversal of the Bankruptcy Court's Omnibus Order. In the second, the Appellants, as a self-styled ad hoc committee of equity security holders,[6] and Tuttle individually appealed various Bankruptcy Court orders, including the August 28, 2015, disclosure order, the October 8, 2015, confirmation order, an order denying Tuttle's first motion to appoint an examiner, and an order approving Allied Nevada's sale of certain non-core assets during bankruptcy.

In two separate opinions, issued on September 15, 2016, and February 10, 2017, the District Court dismissed the Appellants' claims as equitably moot. In each, it rejected their argument that equitable mootness is unconstitutional.[7] It then applied our equitable mootness test, and concluded that each factor weighed in favor of dismissal.

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[5] Those motions are more fully described in the District Court's opinions.

[6] At the hearing and in its Omnibus Order, the Bankruptcy Court denied Tuttle's request for recognition of the ad hoc committee of equity security holders as an official committee.

[7] The District Court's reasoning for the equitable mootness dismissal is substantially the same in both opinions. For purposes of this appeal, references to the dismissal are to both opinions, unless otherwise indicated.

Appellants challenge those dismissal orders, which have been consolidated in the appeal before us now.[8]

II. DISCUSSION[9]

The Appellants devote much of their briefing to the argument that equitable mootness is unconstitutional. But as the District Court succinctly stated, equitable mootness is a valid doctrine in this Circuit:

> The constitutionality of the equitable mootness doctrine was raised in *In re One2One* [*Communications*], *LLC*, 805 F.3d 428 (3d Cir. 2015). As stated by the Third Circuit, "[b]ecause we have already approved the doctrine of equitable mootness in [*In re Continental Airlines*, 91 F.3d 553 (3d Cir. 1996) (en banc)], only the court sitting en banc would have the authority to reevaluate our prior holding. This court may only decline to follow a prior decision of our court without the necessity of an en banc decision when the prior decision conflicts with a Supreme Court decision." [*One2One Commc'ns*, 805 F.3d at 432-33 (citations omitted).]

(JA at 20 n.10); *see also In re Tribune Media Co.*, 799 F.3d 272, 277-80 (3d Cir. 2015) (discussing equitable mootness). *Continental* controls here and will continue to control unless and until we reconsider it en banc, *see One2One Commc'ns*, 805 F.3d at 438 (Krause, J., concurring), or the Supreme Court takes up the issue, which it has declined to do despite recent entreaties, *see, e.g.*, *Quinn v. City of Detroit*, 137 S. Ct. 2270 (2017); *Aurelius Capital Mgmt., L.P. v. Tribune Media Co.*, 136 S. Ct. 1459 (2016).

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[8] In the consolidation order (Order, Apr. 19, 2017), Tuttle was granted leave to file separate briefing in Case No. 17-1513 "raising only those issues which have not been addressed in the brief previously filed" in the other appeals, Case Nos. 16-3745 and 16-3746. Tuttle now has retained counsel who have filed briefing on his behalf.

[9] The District Court had jurisdiction to hear the appeals from the Bankruptcy Court under 28 U.S.C. § 158(a). We have appellate jurisdiction pursuant to 28 U.S.C. §§ 158(d) and 1291.

The Appellants argue that, even if the concept of equitable mootness is legally sound, the District Court abused its discretion by applying it to dismiss their claims. We review an application of equitable mootness for abuse of discretion, *In re SemCrude, L.P.*, 728 F.3d 314, 320 (3d Cir. 2013), accepting the "findings of fact unless they are completely devoid of a credible evidentiary basis or bear no rational relationship to the supporting data." *Nordhoff Invs., Inc. v. Zenith Elecs. Corp.*, 258 F.3d 180, 182 (3d Cir. 2001).

As an initial matter, we have said that "'[e]quitable mootness' is a narrow doctrine by which an appellate court deems it prudent for practical reasons to forbear deciding an appeal when to grant the relief requested will undermine the finality and reliability of consummated plans of reorganization." *Tribune*, 799 F.3d at 277. Allied Nevada, as the proponent of an equitable mootness dismissal, "bears the burden of overcoming the strong presumption that appeals from confirmation orders of reorganization plans—even those not only approved by confirmation but implemented thereafter (called 'substantial consummation' or simply 'consummation')—need to be decided." *Id.* at 278 (citation omitted).

Our recent decisions have synthesized the test for equitable mootness as "proceed[ing] in two analytical steps: (1) whether a confirmed plan has been substantially consummated; and (2) if so, whether granting the relief requested in the appeal will (a) fatally scramble the plan and/or (b) significantly harm third parties who

have justifiably relied on plan confirmation."[10] *Tribune*, 799 F.3d at 278 (quoting *SemCrude*, 728 F.3d at 321).

As to the first step, the Appellants do not meaningfully dispute the District Court's conclusion that Allied Nevada's reorganization plan has been substantially consummated. The Bankruptcy Code defines "substantial consummation" to mean:

> (A) transfer of all or substantially all of the property proposed by the plan to be transferred;
>
> (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and
>
> (C) commencement of distribution under the plan.

11 U.S.C. § 1101(2).

After reviewing the record before it, which included an affidavit by Allied Nevada's chief financial officer, the Court concluded that Allied Nevada had transferred substantially all of its property by satisfying certain debt obligations, eliminating all then-existing liens, and dissolving certain business entities; it had emerged from Chapter 11 bankruptcy and had been legally reorganized; and it had commenced distributions under the plan. The District Court then listed numerous transactions and events triggered by the plan, including that Allied Nevada had entered into new contractual agreements with its investors and creditors, had incurred $126.7 million of new first lien term loans (some of

[10] To the extent Tuttle suggests that the District Court erred because it applied *Continental*'s factors instead of the test laid out in our more recent equitable mootness decisions, we think that concern is unwarranted. Although its opinion addresses the factors in the order listed in *Continental*, the District Court effectively set forth the equitable mootness test as provided in our recent opinions. And, as we explain herein, it fairly considered additional factors set forth in *Continental*.

which it has already repaid), had issued $95 million of new second lien convertible notes, had issued new warrants, and had distributed new common stock to entitled holders of general unsecured claims. The Court also credited Allied Nevada's representation that it had approved the sale of some common stock to a third party, and that it had distributed approximately $1.8 million in cash to satisfy allowed claims and to make payments on certain outstanding contracts and leases.

The Appellants' sole argument in rebuttal is that Allied Nevada's reorganization plan has not been substantially consummated because it has not completed a strategic transaction it had hoped to finance following reorganization. That alone, however, fails to negate the cascade of transactions and distributions that have followed since the plan's consummation.

Moreover, and of high significance, the Appellants did not timely seek or obtain a stay. In *Continental*, we noted that "[a] stay not sought, and a stay sought and denied, lead equally to the implementation of the plan of reorganization." 91 F.3d at 562 (citation omitted); *see also Nordhoff*, 258 F.3d at 186-87 (noting that appellants are required to "pursue with diligence all available remedies to obtain a stay" where failure to do so would render it inequitable to reverse the challenged Bankruptcy Court order (citation omitted)). That factor remains an important consideration. *See Tribune*, 799 F.3d at 282 (listing, as a second and related reason supporting an equitable mootness dismissal, that the appellants failed to obtain a stay of the confirmation order pending appeal); *One2One Commc'ns*, 805 F.3d at 452 (Krause, J., concurring) (highlighting the importance of this factor and observing that "every time we have affirmed a finding of

equitable mootness after *Continental*..., the appellant failed to file a motion for a stay."). On this record, we discern no error in the District Court's conclusion that the plan was substantially consummated.

As to the second step, the Court considered whether granting the Appellants' requested relief would "require undoing the plan as opposed to modify[ing] it in a manner that does not cause its collapse." (JA at 22 (citing *One2One Commc'ns*, 805 F.3d at 435).) Tuttle argues that, instead of applying equitable mootness and dismissing his claims, the District Court should have exercised its remedial powers and fashioned relief in a way that would not upset the plan.

Although we have said that courts "may fashion whatever relief is practicable instead of declining review simply because full relief is not available[,]" we have also said that the "starting point is the relief an appellant specifically asks for." *Tribune*, 799 F.3d at 278 (citation omitted). Indeed, we have affirmed dismissal on equitable mootness grounds because appellants "propose[d] no relief that would not involve reopening [claims settled by the reorganization plan,]" reasoning that "[a]llowing those suits would knock the props out from under the authorization for every transaction that ha[d] taken place." *Id.* at 281 (internal quotation marks and citation omitted).

Here, the Appellants asked the District Court to vacate the confirmation order, unwind completed transactions, and revalue Allied Nevada so as to increase the distribution to stockholders. In other words, they sought to do the whole thing over, which is not much of an alternative in the face of a substantially consummated plan. The Court reasonably rejected that. It concluded that Allied Nevada had shown "a

sufficiently complex reorganization" based on "compromises and agreements that took place over many months" among competing stakeholders, culminating in the Global Settlement and a release of claims embodied in the final plan, which "would be difficult to unravel[.]" (JA at 24.) It did not abuse its discretion by not *sua sponte* fashioning alternative relief. Rather, it reasonably concluded that to grant the Appellants' requested relief would be inequitable.

The Appellants also contest the District Court's conclusion that the requested relief would harm third parties not before the Court. They argue that granting relief would actually benefit certain third parties, including other holders of cancelled stock who held impaired claims. Tuttle adds that the Court erred by extending equitable mootness to protect the interests of sophisticated entities, like Allied Nevada's Exit Facility Lenders. He believes that the reorganization plan "was not adopted in good faith, but was instead designed to unfairly favor" those lenders, and he characterizes his efforts as seeking to recover a "shortfall" that left Allied Nevada's stockholders with only warrants. (Tuttle's Reply at 18.) None of that speaks to the question of whether, in undoing the plan, substantial harm would be done to third parties, including Allied Nevada's creditors and other debtholders, and more generally, stakeholders who held superior claims.

The short of it is that there was no error in the District Court's conclusion, at step one, that the reorganization plan has been substantially consummated, and no abuse of discretion at step two in deciding that granting relief "would likely topple the delicate balances and compromises struck by the [p]lan." (JA at 25 (internal quotation marks and

citation omitted).) Although it should be cautiously applied, the equitable mootness doctrine sometimes is warranted to prevent a court from unscrambling "complex bankruptcy reorganizations when the appealing party should have acted before the plan became extremely difficult to retract." *In re Phila. Newspapers LLC*, 690 F.3d 161, 169 (3d Cir. 2012) (quoting *Nordhoff*, 258 F.3d at 185). That is the case here.[11]

III. CONCLUSION

For the foregoing reasons, we will affirm the District Court's orders dismissing the Appellants' claims as equitably moot.

[11] In light of our holding, we need not address the District Court's alternative conclusion that, even if equitable mootness did not apply, Tuttle failed to show that the Bankruptcy Court "abuse[d] its discretion or err[ed] in denying Tuttle's motions for reconsideration and [the] other motions that are the subject of [his] appeal." (JA at 20 n.11.)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 16-3745, 16-3746 & 17-1513

In re: ALLIED NEVADA GOLD CORP., et al., Debtors

BRIAN TUTTLE,
Appellant

On Appeal from the United States District Court
for the District of Delaware
(D.C. Nos. 1-15-cv-00946, 1-15-cv-00949, and 1-16-cv-00058)
District Judge: Hon. Sue L. Robinson

Submitted Under Third Circuit LAR 34.1(a)
March 12, 2018

Before: JORDAN, KRAUSE, and GREENBERG, *Circuit Judges*

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of Delaware and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on March 12, 2018. On consideration whereof,

It is now hereby ORDERED and ADJUDGED by this Court that the orders of the District Court dated September 15, 2016, and February 10, 2017, are hereby AFFIRMED. All of the above in accordance with the opinion of the Court. Costs to be borne by the Appellants.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: March 27, 2018

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
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March 27, 2018

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RE: In re: Allied Nevada Gold Corp, et al
Case Numbers: 16-3745, 16-3746 & 17-1513
District Case Numbers: 1-15-cv-00946, 1-15-cv-00949 & 1-16-cv-00058

ENTRY OF JUDGMENT

Today, **March 27, 2018** the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:
3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

Attachments:
A copy of the panel's opinion and judgment only.
Certificate of service.
Certificate of compliance if petition is produced by a computer.
No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: Timothy McIntyre
Timothy McIntyre, Case Manager
267-299-4953

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
ALLIED NEVADA GOLD CORP., et al.,	)	Bankr. No. 15-10503-MFW
	)	
Reorganized Debtors.[1]	)	Jointly Administered
	)	
	)	
BRIAN TUTTLE,	)	
	)	
Appellant,	)	Civ. No. 16-058-SLR
	)	
v.	)	
	)	
ALLIED NEVADA GOLD CORP., et al.,	)	
	)	
Appellees.	)	

ORDER

At Wilmington this 10th day of February, 2017, consistent with the memorandum opinion issued this date;

IT IS HEREBY ORDERED that the above captioned appeal is **dismissed** on the grounds of equitable mootness.

Senior United States District Judge

[1]The Reorganized Debtors are: Allied Nevada Gold Corp. (n/k/a Hycroft Mining Corp.); Allied Nevada Gold Holdings LLC; Allied VGH Inc.; Hycroft Resources & Development, Inc.; and Victory Exploration Inc. ANG Central LLC, ANG Cortez LLC, ANG Eureka LLC, ANG North LLC, ANG Northeast LLC, Allied VNC Inc., Hasbrouck Production Company LLC, Victory Gold Inc., and ANG Pony LLC, Debtors in the Chapter 11 cases, were dissolved after the October 22, 2015 effective date. (*See* D.I. 24 n.1)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
ALLIED NEVADA GOLD CORP., et al.,	)	Bankr. No. 15-10503-MFW
	)	
Reorganized Debtors.[1]	)	Jointly Administered
	)	
BRIAN TUTTLE,	)	
	)	
Appellant,	)	Civ. No. 16-058-SLR
	)	
v.	)	
	)	
ALLIED NEVADA GOLD CORP., et al.,	)	
	)	
Appellees.	)	

Brian Tuttle, Sarasota, Florida. Pro Se Appellant.

Michael D. DeBaecke, Esquire, and Stanley Byron Tarr, Esquire, Blank Rome LLP, Wilmington, Delaware. Counsel for Appellees Reorganized Debtors.

Natalie M. Cox, Esquire, United States Department of Justice, Office of the United States Trustee, Wilmington, Delaware, and Robert J. Schneider, Jr., Esquire, United States Department of Justice, Office of the United States Trustee, Newark, New Jersey, Counsel for the United States Trustee.

MEMORANDUM OPINION

Dated: February 10, 2017
Wilmington, Delaware

[1]The Reorganized Debtors are: Allied Nevada Gold Corp. (n/k/a Hycroft Mining Corp.); Allied Nevada Gold Holdings LLC; Allied VGH Inc.; Hycroft Resources & Development, Inc.; and Victory Exploration Inc. ANG Central LLC, ANG Cortez LLC, ANG Eureka LLC, ANG North LLC, ANG Northeast LLC, Allied VNC Inc., Hasbrouck Production Company LLC, Victory Gold Inc., and ANG Pony LLC, Debtors in the Chapter 11 cases, were dissolved after the October 22, 2015 effective date. (*See* D.I. 24 n.1)

ROBINSON, Senior District Judge

I. INTRODUCTION

Brian Tuttle ("Tuttle"),[2] who appears *pro se*, filed this bankruptcy appeal on February 1, 2016.[3] (D.I. 1) The appeal arises from two orders entered in the United States Bankruptcy Court for the District of Delaware ("the bankruptcy court") in *In re Allied Nevada Gold Corp.*, Bankr. No. 15-10503-MFW (Del. Bankr.) ("Bankr. No. 15-10503-MFW"): (1) the January 20, 2016 omnibus order awarding final allowance of compensation for services rendered and for reimbursement of expenses (*see* Bankr. No. 15-10503-MFW at D.I. 1367);[4] and (2) the January 22, 2016 omnibus order denying shareholder motions (*see id.* at D.I. 1373). Tuttle seeks reversal of the January 22, 2016 omnibus order denying shareholder motions. In addition, Tuttle references his other appeals and states that the relief he requests in the instant appeal "is nearly identical" to that sought in the appeals found at Civ. No. 15-946-SLR and Civ. No. 15-949-SLR, where Tuttle sought reversal of the October 8, 2015 confirmation that

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[2]Tuttle is a former holder of now canceled common stock of debtor Allied Nevada Gold Corp.

[3]Tuttle filed three other related bankruptcy appeals: on October 19, 2015, October 21, 2015, and February 1, 2016. The appeals in Civ. No. 15-946-SLR and Civ. No. 15-949-SLR were dismissed on September 15, 2016. The decisions are currently on appeal in the United States Court of Appeals for the Third Circuit, No. 16-3745 and No. 16-3746. At the same time, Tuttle filed a notice of appeal in this case even though there was no decision to appeal. The appeal, No. 16-3747, was dismissed by the appellate court for failure to timely prosecute. The appeal in Civ. No. 16-057-SLR was dismissed for failure to comply with the February 4, 2016 order of this court. (*See* Civ. No. 16-057-SLR at D.I.6)

[4]Tuttle did not attach a copy of the January 20, 2016 omnibus order to his notice of appeal and his brief makes no mention or argument regarding the order. The court considers any issues with regard to the order waived. *See Skretvedt v. E.I. DuPont de Nemours*, 372 F.3d 193, 202-03 (3d Cir. 2004).

confirmed debtors' amended joint Chapter 11 plan of reorganization.[5] (*See* Bankr. No. 15-10503-MFW at D.I. 1136) The court has jurisdiction to hear an appeal from the bankruptcy court pursuant to 28 U.S.C. § 158(a).

II. BACKGROUND

A. Chapter 11 and Restructuring Agreement

Reorganized debtors are a U.S.-based gold and silver producer that operates in the State of Nevada. (*See* D.I. 24) On March 10, 2015 ("petition date"), debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the bankruptcy court. As of the petition date, debtors had approximately: (1) $340 million of secured indebtedness in the form of borrowings and issued letters of credit under (a) a secured credit agreement, (b) a term and security deposit loan agreement, (c) capital lease and term loan agreements, (d) swap agreements, and (e) a promissory note; and (2) $350 million of unsecured debt in the form of (a) senior unsecured notes issued pursuant to an indenture, and (b) trade debt. (*See* Bankr. No. 15-10503-MFW at D.I. 16, ¶¶ 12-24)

Prior to the petition date, debtors negotiated the terms of a consensual restructuring transaction with the holders of 100% of debtors' funded secured debt and approximately 67% of debtors' unsecured notes. (*Id.* at D.I. 16, ex. 2) On the petition date, debtors entered into a restructuring support agreement ("RSA"). (*See id.*)

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[5]Both appeals were dismissed after the court concluded that relevant factors weighed in favor of dismissal on the grounds of equitable mootness. *See* Civ. No. 15-946-SLR at D.I. 29 and Civ. No. 15-949-SLR at D.I. 35.

On March 19, 2015, the United States Trustee for Region 3 ("U.S. Trustee") appointed a creditors committee in the Chapter 11 case pursuant to Bankruptcy Code § 1102, and on April 10, 2015, appointed a committee of equity security holders, also pursuant to § 1102 of the Bankruptcy Code. (*Id.* at D.I. 95, D.I. 157) The equity committee's membership was reconstituted from time to time subsequent to its formation. (*Id.* at D.I. 371, D.I. 449) The equity committee and creditors committee were dissolved on the October 22, 2015 effective date ("effective date") in accordance with the terms of the amended plan and confirmation order. (*See* Bankr. No. 15-10503-MFW, D.I. 931, at 35, Art. IV, § 4.14)

B. Sale Order

On March 31, 2015, debtors filed a motion seeking bankruptcy court approval of a proposed sale of certain non-core exploration properties and related assets ("sale assets"), along with related bidding procedures and entry into a stalking horse purchase agreement with Waterton Global Resource Management ("Waterton") that secured a $17.5 million cash bid for the sale assets. (*Id.* at D.I. 133) Debtors' financial advisor, Barak M. Klein ("Klein"), stated that the sale was "in the best interests of debtors and their estates because the debtors were not able to commit the time and capital to effectively monetize the sale assets through their own operations, and the proceeds from the sale would allow debtors to satisfy, in whole or in part, an obligation under the original RSA. (*Id.* at D.I. 133, ex. D at ¶ 12) The bankruptcy court approved the sale motion and entry into the stalking horse purchase agreement and the proposed bidding procedures. (*Id.* at D.I. 606)

C. Debtors' Plan and Amendments to the Plan

On April 24, 2015, debtors filed a joint Chapter 11 plan of reorganization and disclosure statement. (*Id.* at D.I. 251, 252) The plan of reorganization proposed a recovery to holders of canceled common stock, contingent on the class of such holders voting in favor of such plan, in the form of warrants that could convert into 10.0% of the new equity in the reorganized debtors. (*Id.* at D.I. 251 at § 2.16) The equity committee indicated it intended to object to the plan of reorganization's proposed treatment of holders of canceled common stock, and sought discovery related thereto. (*Id.* at D.I. 506 at ¶ 10) Debtors provided discovery to the equity committee. (*See* D.I. 793, ex. C at ¶¶ 8-12)

Following the filing of the plan of reorganization, debtors' business was negatively affected by numerous factors that severely impeded its mining operations including: (1) high employee turnover; (2) refusal by key vendors to contract with debtors on commercially reasonable terms; (3) gold and silver production levels failing to meet expectations; and (4) continuing decline in gold prices. (*See id.* at ¶¶ 6-7) On July 8, 2015, debtors commenced a plan to suspend mining operations at their sole revenue-generating mine, the Hycroft Mine, and terminated approximately 230 of the remaining 368 employees. (*See id.* at D.I. 919 at 17-19; D.I. 1100 at ¶¶ 10-12) According to appellees, due to the plan to suspend mining operations, debtors were unable to comply with several covenants and milestones in the RSA and, as a result, the RSA parties had the right to terminate the RSA. (*See* Civ. No. 15-946-SLR, D.I. 16; Civ. No. 15-949-SLR, D.I. 22 at 9) Thereafter, debtors negotiated certain amendments

to the original RSA ("amended RSA") with the RSA parties and, on August 27, 2015, the bankruptcy court approved debtors' assumption of the amended RSA. (*Id.* at D.I. 926)

On July 23, 2015, debtors filed an amended joint Chapter 11 plan of reorganization and disclosure statement, both of which reflected the agreements reached in the amended RSA. (*Id.* at D.I. 756, 758) The amended plan of reorganization proposed no recovery to holders of canceled common stock. (*Id.* at D.I. 756 at § 2.14)

D. Global Settlement

On August 19, 2015, debtors and RSA parties announced they had reached a settlement ("global settlement"), with the remaining major constituencies in the Chapter 11 cases not parties to the amended RSA - the creditors committee and the equity committee. (*Id.* at D.I. 864) On August 27, 2015, debtors filed a second amended joint Chapter 11 plan of reorganization ("amended plan") and a second amended disclosure statement ("amended disclosure statement") that reflected the global settlement. (*Id.* at D.I. 931, D.I. 933) The amended plan proposed to provide debtors': (1) secured creditors a distribution in the form of new secured debt in the reorganized debtors ("new first lien term loans"); (2) unsecured creditors the option to receive a cash recovery or to receive privately traded common stock in the reorganized debtors ("new common stock"); and (3) canceled common stock holders a distribution in the form of new warrants. (*Id.* at D.I. 931 at Art. II) The creditors committee and equity committee supported confirmation of the amended plan. (*Id.*)

On August 28, 2015, the bankruptcy court entered the disclosure statement order. (*Id.* at D.I. 940) On September 8, 2015, on behalf of the ad hoc equity committee holders of canceled common stock, Tuttle filed an objection to debtors' notice of hearing with respect to the amended disclosure statement. (*Id.* at D.I. 969)

E. Examiner Motions

On August 11, 2015, Tuttle filed a motion to appoint an examiner. (*Id.* at D.I. 819) Debtors, the creditors committee, and an ad hoc group of noteholders objected to the motion. (*Id.* at D.I. 957, 958, 960) The equity committee also submitted a response to the motion and stated that it had "analyzed a multitude of potential claims against debtors, debtors' directors and officers, and third parties . . . . weighed its valuation analysis, operational analysis, and analysis of certain potential claims" and, based on its analysis, it "believes that the proposed [amended] plan provides existing equity holders with the best opportunity for a recovery given debtors' current circumstances." (*Id.* at D.I. 961, ¶ 2, 4) Following a September 15, 2015 evidentiary hearing, the bankruptcy court entered an order that denied the motion to appoint an examiner.[6] (*Id.* at D.I. 995, 1021)

F. Discovery

Tuttle sought discovery from debtors and other parties during the pendency of the Chapter 11 cases. On August 25, 2015, debtors offered Tuttle discovery of more than 3,000 documents that consisted of over 160,000 pages and included 595 native

[6]The order denying the first examiner motion was appealed to this court in Civ. No. 15-949-SLR. As discussed in n.3, *supra*, the case is currently pending on appeal before the Third Circuit.

files, that had been previously produced to the official committees, on the condition that Tuttle execute a standard confidentiality agreement. (Bankr. No. 15-10503-MFW at D.I. 912) On August 27, 2015, the bankruptcy court approved debtors' proposal and required Tuttle to execute a confidentiality agreement before receiving the documents that had been produced to the official committees. (D.I. 25, ex. 3 at 43-45; Bankr. No. 15-10503-MFW at D.I. 961) On September 24, 2015, Tuttle asked that he be furnished "just the requested" non-disclosure agreements. (Bankr. No. 15-10503-MFW at D.I. 1358, ex. A) Tuttle did not return the executed confidentiality agreement to debtors until October 1, 2015, five days prior to the scheduled October 6, 2015 confirmation hearing.

G. Confirmation of the Amended Plan

On September 24, 2015, Tuttle and other equity security holders objected to the amended plan on the grounds that the amended plan undervalued debtors and that holders of canceled common stock were entitled to an additional recovery beyond the new warrants. (*Id.* at D.I. 1048, D.I. 1049, D.I. 1114)[7] The confirmation hearing was held on October 6, 2015. Testifying on behalf of debtors were Stephen M. Jones, debtors' chief financial officer ("CFO"), and Klein. (*Id.* at D.I. 1149) Klein testified that the going concern enterprise value of the reorganized debtors, as of October 31, 2015, was in a range between $200 million and $300 million ("Moelis valuation"). (*See id.* at D.I. 1100) The Moelis valuation placed holders of canceled common stock out of the

[7]Tuttle's motions are found at D.I. 1049 and D.I. 1114.

money by at least $350 million. (*Id.*) Tuttle cross-examined each of debtors' witnesses. (D.I. 26, ex. 7 at 16-32, 58-66, 70-89, 120-123)

Tuttle objected to the amended plan, but did not proffer any witnesses or offer any competing valuation of debtors at the confirmation hearing. (*Id.* at ex. 7) Tuttle argued that the Moelis valuation was too low and should be increased to enable greater distributions to holders of canceled common stock. (*See id.*) In response to Tuttle's objection to the recovery to holders of canceled common stock, the bankruptcy court explained that "[Tuttle's] representative, the [e]quity [c]ommittee, has already negotiated the terms of the warrant on your behalf." (*Id.* at ex. 7 at 160) Finally, the bankruptcy court overruled Tuttle's oral motion to stay the confirmation hearing that he made at the confirmation hearing. (*Id.* at 124) In entering the confirmation order on October 8, 2015, the bankruptcy court found that the Moelis valuation was "reasonable, persuasive, credible and accurate." (*Id.* at D.I. 1136, ¶ 56)

H. Amended Plan Implementation

On the October 22, 2015 effective date, the amended plan was consummated, and the reorganized debtors emerged from Chapter 11. (Bankr. No. 15-10503-MFW at D.I. 1190) According to Jones, executive vice president, secretary, and CFO of Hycroft Mining Corp. (f/k/a Allied Nevada Gold Corp.) (as well as CFO of the other reorganized debtors), the consummation of the amended plan triggered the following transactions and events: (1) debtors (i) repaid a portion of certain prepetition debt instruments and other secured obligations, and the DIP facility, (ii) rejected, among other things, certain capital lease obligations, and (iii) eliminated all then existing liens; (2) the reorganized

debtors were formed and appointed their boards of directors and adopted new organizational documents; (3) the reorganized debtors dissolved certain prior business entities; (4) pursuant to a new credit agreement, the reorganized debtors incurred $126.7 million of new first lien term loans and have repaid approximately $780,000 of the new first lien term loans pursuant to terms of the credit agreement; (5) the reorganized debtors entered into a new indenture and issued approximately $95 million of new second lien convertible notes, since the effective date have issued an additional $15 million of new second lien convertible notes and, based on lending commitments from existing holders of such notes, the reorganized debtors have called for funding of an additional $5 million of new second lien convertible notes; (6) the reorganized debtors effectuated an interim distribution of new common stock to holders of allowed general unsecured claims entitled to receive such stock under the amended plan, reserved the remainder of such stock for distribution pending further claims reconciliation, entered into a stockholders agreement with the recipients of the new common stock and, to date, at least one shareholder has received the reorganized debtors' approval (as required by the stockholders agreement) to trade the new common stock to a third party; (7) the reorganized debtors issued 100% of the new warrants to holders of the canceled common stock and holders of subordinated securities claims (as defined in the amended plan), and entered into the associated new warrant agreement (as defined in the amended plan); and (8) the reorganized debtors distributed approximately $1.8 million of cash to satisfy (i) allowed Bankruptcy Code § 503(b)(9) claims, and (ii) cure obligations with respect to assumed executory contracts and unexpired leases. (*See* D.I. 24, ex. A at ¶ 3)

I. January 20, 2016 Hearing

On January 20, 2016, the bankruptcy court held an evidentiary hearing and considered numerous shareholder motions that Tuttle had filed from September 24, 2015 through January 4, 2016. (*See* Bankr. No. 15-10503-MFW at D.I. 1049, 1050, 1110, 1112, 1172, 1173, 1174, 1205, 1206, 1343, 1345, 1346, 1348)[8] All motions were denied. The January 22, 2016 order is the subject of this appeal.[9]

During the hearing, the bankruptcy court considered three motions filed prior to entry of the confirmation, including Tuttle's: (1) September 24, 2015 motion for standing to prosecute equitable subordination claims against the holders of certain of the debtors' senior unsecured notes and the Bank of Nova Scotia (*id.* at D.I. 1049); (2) September 24, 2015 motion to take depositions of certain RSA Parties upon written questions with respect to the standing motion (*id.* at 1050); and (3) October 5, 2015 second motion to appoint examiner. The bankruptcy court denied these motions as moot given the entry of the confirmation order and the release of the underlying claims under the amended plan. (D.I. 26, ex. 9 at 68, 69, 71, 88; Bankr. No. 15-10503-MFW at D.I. 1373)

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[8]The motions at D.I. 1205 and 1206 were filed by Jordan Darga and Stoyan Tachev, respectively, neither of whom are parties to this appeal. (*See* Bankr. No. 15-10503-MFW at D.I. 1205, 1206)

[9]The omnibus order denying shareholders motions denied two motions filed by Tuttle: (1) an application for reimbursement of his expenses as a purported "party of interest" (*id.* at D.I. 1112); and (2) a motion to "recognize" the ad hoc committee of equity security holders as an official committee (*id.* at D.I. 1346). In a stipulation dated May 19, 2016, Tuttle, appellees, and the U.S. Trustee agreed to dismiss with prejudice that portion of the appeal that seeks reversal of the bankruptcy court's ruling on the expense reimbursement motion and the ad hoc committee recognition motion. (D.I. 20) Hence, neither motion (D.I. 1112; D.I. 1346) is subject to this appeal.

With regard to the second motion to appoint an examiner, filed on October 5, 2015, one day prior to the hearing to consider confirmation of the amended plan, it was denied on the grounds that the "second examiner motion is no different from [the] first examiner motion" and confirmation of the amended plan on October 8, 2015 precluded the appointment of an examiner under the Bankruptcy Code. (*See* D.I. 26, ex. 8 at 76; Bankr. No. 15-10503-MFW at D.I. 1373)

Also considered were motions Tuttle filed after entry of the confirmation order, including Tuttle's October 21, 2015 motions: (1) to stay the confirmation order (Bankr. No. 15-10503-MFW at D.I. 1172); (2) for reconsideration on findings of fact, conclusions of law and order confirming debtors' amended joint Chapter 11 plan of reorganization (*id.* at D.I. 1173); and (3) to reconsider the bankruptcy court's denial of Tuttle's oral motion to stay (*id.* at D.I. 1174). The motions were denied. (*Id.* at D.I. 1373) With regard to the motion for reconsideration of the confirmation order, it (along with related motions filed by other former shareholders) was denied because it did not meet the standard for reconsideration in that it neither presented "new facts" or "new law." (*See* D.I. 26, ex. 9 at 63-64; Bankr. No. 15-10503-MFW at D.I. 1373)

Finally, the bankruptcy court considered Tuttle's January 4, 2016 motions (also filed after entry of the confirmation order), including: (1) a motion to compel production of documents from debtors (Bankr. No. 15-10503-MFW at D.I. 1343); (2) a motion for an order authorizing Rule 2004 examinations (*id.* at D.I. 1345); and (3) a motion to compel non-party to produce documents (*id.* at D.I. 1348). These motions were also denied at the January 20, 2016 hearing. The bankruptcy court noted that the plan had

been confirmed and found that "discovery is now moot," "there's nothing pending that the discovery is going to be relevant to", and Tuttle was not "diligent in getting discovery." (D.I. 26, ex. 9 at 75, 100)

III. STANDARD OF REVIEW

In undertaking a review of the issues on appeal, the district court applies a clearly erroneous standard to the bankruptcy court's findings of fact and a plenary standard to that court's legal conclusions. *See American Flint Glass Workers Union v. Anchor Resolution Corp.*, 197 F.3d 76, 80 (3d Cir. 1999). With mixed questions of law and fact, the district court must accept the bankruptcy court's "finding of historical or narrative facts unless clearly erroneous, but exercise[s] 'plenary review of the [bankruptcy court's] choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" *Mellon Bank, N.A. v. Metro Commc'ns, Inc.*, 945 F.2d 635, 642 (3d Cir. 1991) (citing *Universal Minerals, Inc. v. C.A. Hughes & Co.*, 669 F.2d 98, 101-02 (3d Cir. 1981)). The district court's appellate responsibilities are further informed by the directive of the United States Court of Appeals for the Third Circuit, which effectively reviews on a *de novo* basis bankruptcy court opinions. *See In re Hechinger*, 298 F.3d 219, 224 (3d Cir. 2002); *In re Telegroup, Inc.*, 281 F.3d 133, 136 (3d Cir. 2002). A factual finding is clearly erroneous when "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *In re Cellnet Data Sys., Inc.*, 327 F.3d 242, 244 (3d Cir. 2003) (citing *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless

clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witness." Fed. R. Bankr. P. 8013.

IV. ISSUES RAISED ON APPEAL

Tuttle raises the following issues for review: (*See* D.I. 21)

(1) Whether the bankruptcy court committed an error of law or an abuse of discretion in denying the motion for reconsideration on findings of fact, conclusions of law and order confirming debtors' amended joint Chapter 11 plan of reorganization.

(2) Whether the bankruptcy court committed an error of law or an abuse of discretion in denying Tuttle's motion for leave of court to take depositions upon written questions.

(3) Whether the bankruptcy court committed an error of law or an abuse of discretion in denying the motion to compel non-party to produce documents.

(4) Whether Tuttle was prejudiced by the bankruptcy court's committing an error of law or abuse of discretion in denying Tuttle's second motion to compel.

(5) Whether the bankruptcy court committed an error of law or abuse of discretion in denying Tuttle's second motion to appoint an examiner with access to and authority to disclose privileged materials.

(6) Whether the bankruptcy court committed an error of law or abuse of discretion in denying the motion for reconsideration on Tuttle's oral motion to stay the proceedings.

V. DISCUSSION

Appellees argue that the appeal should be dismissed by reason of equitable mootness. They further argue that the appeal is otherwise meritless and should be denied. Tuttle responds that the equitable mootness doctrine is unconstitutional[10] and not applicable.[11] He further contends that the value of appellees' assets has increased substantially since confirmation. Finally, Tuttle contends that "aside from innuendos and conjecture," appellees offer no evidence to support their claim that the relief he seeks has the ability to fatally scramble the amended plan and injure third parties.

"'Equitable mootness' is a narrow doctrine by which an appellate court deems it prudent for practical reasons to forbear deciding an appeal when to grant the relief

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[10]The constitutionality of the equitable mootness doctrine was raised in *In re One2One Commc'ns, LLC*, 805 F.3d 428 (3d Cir. 2015). As stated by the Third Circuit, "[b]ecause we have already approved the doctrine of equitable mootness in *Continental*, only the court sitting en banc would have the authority to reevaluate our prior holding. This court may only decline to follow a prior decision of our court without the necessity of an en banc decision when the prior decision conflicts with a Supreme Court decision." *Id.* at 433 (citations omitted). In *One2One*, appellant argued that equitable mootness jurisprudence should be reevaluated in light of the Supreme Court's decision in *Stern v. Marshall*, 564 U.S. 462 (2011). The Third Circuit stated that *Stern*, alone, did not permit it to depart from *Continental*. *Id.*

[11]The issues raised by Tuttle challenge rulings made by the bankruptcy court subsequent to entry of the confirmation order. While the court sees no need to address these issues since, as will be discussed, the factors considered by the court favor equitable mootness and dismissal of the appeal, it finds that the bankruptcy court did not abuse its discretion or err in denying Tuttle's motions for reconsideration and other motions that are the subject of this appeal. *See Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 673 (3d Cir.1999) (court reviews the denial of a motion for reconsideration for abuse of discretion); *Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1310 (3d Cir.1995) (court reviews for abuse of discretion the denial of discovery motions).

requested will undermine the finality and reliability of consummated plans of reorganization." *In re Tribune Media Co.*, 799 F.3d 272, 277 (3d Cir. 2015). "The party seeking to invoke the doctrine (*i.e.*, appellees) bears the burden of overcoming the strong presumption that appeals from confirmation orders of reorganization plans--even those not only approved by confirmation but implemented thereafter (called "substantial consummation" or simply "consummation")--need to be decided." *Id.* at 277-78 (citing *In re SemCrude, L.P.*, 728 F.3d 314, 321 (3d Cir. 2013)).

The Third Circuit first recognized the doctrine of equitable mootness in *In re Continental Airlines*, 91 F.3d 553 (3d Cir. 1996) (en banc). The majority opinion noted certain factors to consider "in making a mootness call:"

> Factors that have been considered by courts in determining whether it would be equitable or prudential to reach the merits of a bankruptcy appeal include (1) whether the reorganization plan has been substantially consummated, (2) whether a stay has been obtained, (3) whether the relief requested would affect the rights of parties not before the court, (4) whether the relief requested would affect the success of the plan, and (5) the public policy of affording finality to bankruptcy judgments.

In re Tribune Media Co., 799 F.3d at 278 (quoting *In re Continental Airlines*, 91 F.3d at 560 (citation omitted).

Over the years, Third Circuit precedential opinions have refined the doctrine. As explained in *Tribune*, "equitable mootness . . . proceed[s] in two analytical steps: (1) whether a confirmed plan has been substantially consummated; and (2) if so, whether granting the relief requested in the appeal will (a) fatally scramble the plan and/or (b) significantly harm third parties who have justifiably relied on plan confirmation." *In re Tribune* 799 F.3d at 278 (citing *In re SemCrude*, 728 F.3d at 321).

If the confirmed plan has been substantially consummated, the court next determines whether granting relief will require undoing the plan as opposed to modify it in a manner that does not cause its collapse. *In re One2One Communications, LLC*, 805 F.3d at 435.

The court concludes that the factors considered weigh in favor of applying the equitable mootness doctrine. First, the plan has been substantially consummated. "Substantial consummation" is defined as the:

> (A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan.

11 U.S.C. § 1101(2).

The Jones declaration submitted by appellees states that, as of the October 22, 2015 effective date, a number of transactions and events had occurred, including: (1) debtors transferred substantially all of their property under the amended plan by satisfying certain debt instruments and other secured obligations in accordance with the terms thereof, eliminating all then-existing liens, and dissolving certain business entities; (2) reorganized debtors succeeded to debtors' assets, appointed new boards of directors, and adopted new organizational documents; and (3) distributions under the amended plan commenced. In addition, reorganized debtors have incurred new first lien term loans, issued new second lien convertible notes and new warrants, have entered into a stockholders agreement, and distributed a significant amount of the new common stock to holders of general unsecured claims entitled thereto, and some new common stock has been sold to a third party. Finally, reorganized debtors have

distributed approximately $1.8 million of cash to satisfy allowed Bankruptcy Code § 503(b)(9) claims and to cure payments with respect to assumed executory contracts and unexpired leases.

Finally, no stay has been obtained. Tuttle's oral motion to stay that he made at the confirmation hearing on October 6, 2015 was denied because Tuttle had not yet scheduled a hearing on his second examiner motion. (*See* D.I. 26, ex. 7 at 111, 114-116, 123) Next, on October 21, 2015, one day prior to the October 22, 2015, effective date, Tuttle filed a written motion to stay and a motion for reconsideration of the denial of his oral motion to stay. (*See* Bankr. No. 15-10503-MFW at D.I. 1172, 1174) The motions were discussed at the January 20, 2016 hearing and a written order was entered on January 22, 2016 that denied the motions. (*See* D.I. 26, ex. 9 at 45, 47, 63, 67-69, 90, 106, 107; Bankr. No. 15-10503-MFW at D.I. 1373) During the hearing, the bankruptcy court stated that, "since the plan was confirmed," the motion has to be denied as moot. (D.I. 26, ex. 9 at 72) In addition, a review of the record demonstrates that Tuttle failed to carry his burden with respect to the motion to stay the confirmation order. *See Family Kingdom, Inc., v. EMIF N.J. Ltd. P'ship*, 225 B.R. 65, 69 (Bankr. D.N.J. 1998) (listing factors considered when determining whether to grant a stay).

"The existence or absence of a stay is a critical factor in determining whether to dismiss an appeal under the doctrine of equitable mootness." *In re Grand Union Co.*, 200 B.R. 101, 105 (citing *Continental*, 91 F.3d at 561-63). Indeed, the absence of a stay is so critical to the analysis that even the unsuccessful pursuit of a stay may favor a finding of equitable mootness. *See Continental*, 91 F.3d at 562 ("'[A] stay not sought,

and a stay sought and denied, lead equally to the implementation of the plan of reorganization.'") (quoting *Matter of UNR Indus., Inc.*, 20 F.3d 766, 770 (7th Cir. 1994)). Where no stay has been obtained, the reorganization plan goes forward, and it is difficult to undo the acts of third parties proceeding under the plan without prejudicing those third parties. *See generally Continental*, 91 F.3d at 561–63; *In re Highway Truck Drivers & Helpers Local Union No. 107*, 888 F.2d 293, 297 (3d Cir. 1989). Such is the case here.

The amended plan at bar involved intricate transactions, and appellees (who bear the burden to demonstrate that prudential factors weigh in their favor, *see In re Semcrude*, 728 F.3d at 321) submitted the Jones declaration which provides ample evidence that it would be difficult to unravel or retract the amended plan. The amended plan was the result of compromises and agreements that took place over many months among debtors, RSA parties, the creditors committee, and the equity committee. The record as above described reflects that this case involves a sufficiently complex reorganization. *See Continental*, 91 F.3d at 560-61 (reversal of a confirmation order is more likely to lead to an inequitable result "where the reorganization involves intricate transactions or where outside investors have relied on the confirmation of the plan"); *see also Nordhoff Investments, Inc. v Zenith Electronics Corp.*, 258 F.3d 180, 186 (3d Cir. 2001) (finding that plan that involved hundreds of millions of dollars, the issuance of unretractable bonds, and restructuring the debt, assets, and management of a major corporation "could [not] be reversed without great difficulty and inequity").

Tuttle's primary objection is that the value of appellees' assets has increased substantially since confirmation. However, appeals challenging plan valuations on this basis have been rejected under the doctrine of equitable mootness because the proposed relief (*i.e.*, revaluation of the company) would "likely topple the delicate balances and compromises struck by the [p]lan." *In re Genesis Health Ventures, Inc.*, 280 B.R. 339, 346 (D. Del. 2002); *see also Tribune*, 799 F.3d 281 (holding appeal is equitably moot because relief requested would "effectively undermine the [s]ettlement" underlying the plan and, "as a result, recall the entire plan for a redo").

In addition, Tuttle's requested relief would detrimentally affect the rights of numerous third parties not before the court. Equitable mootness "protects the interests of non-adverse third parties who are not before the reviewing court but who have acted in reliance upon the plan as implemented." *Continental*, 91 F.3d at 362 (citation omitted). The requested relief would adversely affect third parties that acted in reliance on the amended plan's confirmation, including exit funding lenders as well as recipients of the distributions and issuances of new common stock and new warrants and parties who may have obtained the instruments through trades on the open market. In addition, through required approvals in accordance with the stockholders agreement, there has been one trade of the new common stock to a third party.

Finally, public policy favors dismissal. "The public policy of affording finality to bankruptcy judgments is . . . the lens through which the other equitable mootness factors should be viewed." *Nordhoff*, 258 F.3d at 190. There is a "strong public policy in favor of maximizing debtors' estates and facilitating successful reorganization" in

bankruptcy proceedings. *Continental*, 91 F.3d at 565. "[T]he importance of allowing approved reorganizations to go forward in reliance on bankruptcy court confirmation orders may be the central animating force behind the equitable mootness doctrine." *Id.* Given the number of parties involved in the negotiation, approval, and substantial consummation of the amended plan, the court concludes that public policy favors leaving the amended plan undisturbed, Tuttle's objections notwithstanding.

VI. CONCLUSION

For the above reasons, the court concludes that the relevant factors weigh in favor of dismissing the instant appeal on the grounds of equitable mootness.

An appropriate order shall follow.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
ALLIED NEVADA GOLD CORP., et al.,	)	Bankr. No. 15-10503-MFW
	)	
Reorganized Debtors.[1]	)	Jointly Administered
	)	
AD HOC COMMITTEE OF SHAREHOLDERS,	)	
	)	
Appellant,	)	Civ. No. 15-946-SLR
	)	
v.	)	
	)	
ALLIED NEVADA GOLD CORP., et al.,	)	
	)	
Appellees.	)	
	)	
BRIAN TUTTLE,	)	
	)	
Appellant,	)	Civ. No. 15-949-SLR
	)	
v.	)	
	)	
ALLIED NEVADA GOLD CORP., et al.,	)	
	)	
Appellees.	)	

ORDER

At Wilmington this 15th day of September, 2016, consistent with the memorandum opinion issued this date;

[1]The Reorganized Debtors are: Allied Nevada Gold Corp. (n/k/a Hycroft Mining Corp.); Allied Nevada Gold Holdings LLC; Allied VGH Inc.; Hycroft Resources & Development, Inc.; and Victory Exploration Inc. ANG Central LLC, ANG Cortez LLC, ANG Eureka LLC, ANG North LLC, ANG Northeast LLC, Allied VNC Inc., Hasbrouck Production Company LLC, Victory Gold Inc., and ANG Pony LLC, Debtors in the Chapter 11 cases, were dissolved after the October 22, 2015 effective date. (*See* Civ. No. 15-946-SLR at D.I. 16 n.1)

IT IS HEREBY ORDERED that:

1. The motions to consolidate related appeals are **denied**. (Civ. No. 15-946-SLR at D.I. 26; Civ. No. 15-949-SLR at D.I. 32)

2. The above captioned appeals are **dismissed** on the grounds of equitable mootness.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
ALLIED NEVADA GOLD CORP., et al.,	)	Bankr. No. 15-10503-MFW
	)	
Reorganized Debtors.[1]	)	Jointly Administered
	)	
AD HOC COMMITTEE OF SHAREHOLDERS,	)	
	)	
Appellant,	)	Civ. No. 15-946-SLR
	)	
v.	)	
	)	
ALLIED NEVADA GOLD CORP., et al.,	)	
	)	
Appellees.	)	
	)	
BRIAN TUTTLE,	)	
	)	
Appellant,	)	Civ. No. 15-949-SLR
	)	
v.	)	
	)	
ALLIED NEVADA GOLD CORP., et al.,	)	
	)	
Appellees.	)	

[1]The Reorganized Debtors are: Allied Nevada Gold Corp. (n/k/a Hycroft Mining Corp.); Allied Nevada Gold Holdings LLC; Allied VGH Inc.; Hycroft Resources & Development, Inc.; and Victory Exploration Inc. ANG Central LLC, ANG Cortez LLC, ANG Eureka LLC, ANG North LLC, ANG Northeast LLC, Allied VNC Inc., Hasbrouck Production Company LLC, Victory Gold Inc., and ANG Pony LLC, Debtors in the Chapter 11 cases, were dissolved after the October 22, 2015 effective date. (*See* Civ. No. 15-946-SLR at D.I. 16 n.1)

Jordan Darga, Groveland, Florida; Brian Tuttle, Sarasota, Florida; and Stoyan Tachev, Sofia, Bulgaria: Ad Hoc Committee of Shareholders. Brian Tuttle, individually, Sarasota, Florida. Pro Se Appellants.

Michael D. DeBaecke, Esquire, and Stanley Byron Tarr, Esquire, Blank Rome LLP, Wilmington, Delaware. Counsel for Appellees.

MEMORANDUM OPINION

Dated: September 15, 2016
Wilmington, Delaware

ROBINSON, District Judge

I. INTRODUCTION

Appellants ad hoc committee of equity security holders ("ad hoc committee") (consisting of Jordan Darga ("Darga"), Brian Tuttle ("Tuttle"),[2] and Stoyan Tachev ("Tachev")) and Tuttle, individually, all appearing *pro se*, filed these bankruptcy appeals on October 19, 2015 and October 21, 2015, respectively. (Civ. No. 15-946-SLR at D.I. 1; Civ. No. 15-949-SLR at D.I. 1) The appeal in Civ. No. 15-946-SLR, arises from an order entered in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court") in *In re Allied Nevada Gold Corp.*, Bankr. No. 15-10503-MFW (Del. Bankr.) ("Bankr. No. 15-10503-MFW") on October 8, 2015, that confirmed debtors' amended joint Chapter 11 plan of reorganization ("confirmation order").[3] (*See* Bankr. No. 15-10503-MFW at D.I. 1136) The ad hoc committee seeks reversal of the order. The appeal filed by Tuttle in Civ. No. 15-959-SLR, arises from several orders entered in the Bankruptcy Court including the October 8, 2015 confirmation order, an August 28, 2015 order approving the disclosure statement for the amended plan ("disclosure statement order") (*id.* at D.I. 940), an order approving debtors' sale of certain non-core assets ("sale order") (*id.* at D.I. 606), and a September 15, 2015 order denying a motion

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[2]Tuttle is a former holder of now canceled common stock of debtor Allied Nevada Gold Corp.

[3]Because the parties briefed *Ad Hoc Committee of Shareholders v. Allied Nevada Gold Corp.*, Civ. No. 15-946-SLR, and *Tuttle v. Allied Nevada Gold Corp.*, Civ. No. 15-959-SLR, together, both appeals will be addressed in this memorandum opinion. Tuttle has another bankruptcy appeal pending in this court, *Tuttle v. Allied Nevada Gold Corp.*, Civ. No. 16-058-SLR, filed February 1, 2016. Tuttle has filed motions to consolidate the appeals, opposed by appellee. (*See* Civ. No. 15-946-SLR at D.I. 26; Civ. No. 15-949-SLR at D.I. 32; Civ. No. 16-058-SLR at D.I. 18) The motions to consolidate will be denied and, therefore, the appeal in Civ. No. 16-058-SLR will be addressed separately.

to appoint an examiner in the Chapter 11 cases ("examiner denial order") (*id.* at D.I. 995). Tuttle also seeks reversal of the confirmation order. The court has jurisdiction to hear an appeal from the bankruptcy court pursuant to 28 U.S.C. § 158(a).

II. BACKGROUND

A. Chapter 11 and Restructuring Agreement

Reorganized debtors are a U.S.-based gold and silver producer that operates in the State of Nevada. (*See* Civ. No. 15-946-SLR, D.I. 16 and Civ. No. 15-949-SLR, D.I. 32 at 6) On March 10, 2015 ("petition date"), debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the Bankruptcy Court. As of the petition date, debtors had approximately: (1) $340 million of secured indebtedness in the form of borrowings and issued letters of credit under (a) a secured credit agreement, (b) a term and security deposit loan agreement, (c) capital lease and term loan agreements, (d) swap agreements, and (e) a promissory note; and (2) $350 million of unsecured debt in the form of (a) senior unsecured notes issued pursuant to an indenture, and(b) trade debt. (*See* Bankr. No. 15-10503-MFW at D.I. 16, ¶¶ 12-24)

Prior to the petition date, debtors negotiated the terms of a consensual restructuring transaction with the holders of 100% of debtors' funded secured debt and approximately 67% of debtors' unsecured notes. (*Id.* at D.I. 16, ex. 2) On the petition date, debtors entered into a restructuring support agreement ("RSA"). (*See id.*)

On March 19, 2015, the United States Trustee for Region 3 ("U.S. Trustee") appointed a creditors committee in the Chapter 11 case pursuant to Bankruptcy Code

§ 1102, and on April 10, 2015, appointed a committee of equity security holders, also pursuant to § 1102 of the Bankruptcy Code. (*Id.* at D.I. 95, D.I. 157) The equity committee's membership was reconstituted from time to time subsequent to its formation. (*Id.* at D.I. 371, D.I. 449) The equity committee and creditors committee were dissolved on the October 22, 2015 effective date ("effective date") in accordance with the terms of the amended plan and confirmation order. (*See* Bankr. No. 15-10503-MFW, D.I. 931, at 35, Art. IV, § 4.14)

B. Sale Order

On March 31, 2015, debtors filed a motion seeking Bankruptcy Court approval of a proposed sale of certain non-core exploration properties and related assets ("sale assets"), along with related bidding procedures and entry into a stalking horse purchase agreement with Waterton Global Resource Management ("Waterton") that secured a $17.5 million cash bid for the sale assets. (*Id.* at D.I. 133) Debtors' financial advisor, Barak M. Klein ("Klein"), stated that the sale was "in the best interests of debtors and their estates because the debtors were not able to commit the time and capital to effectively monetize the sale assets through their own operations, and the proceeds from the sale would allow debtors to satisfy, in whole or in part, an obligation under the original RSA. (*Id.* at D.I. 133, ex. D at ¶ 12)

The Bankruptcy Court approved entry into the stalking horse purchase agreement and the proposed bidding procedures. Thereafter, debtors engaged in a marketing process through their financial advisor, Moelis & Company LLC ("Moelis"), and contacted 53 different parties. (*Id.* at D.I. 575 at ¶¶ 7, 12, D.I. 606) Three of the

parties signed non-disclosure agreements to participate in the bidding process and were provided with the same materials and information as the stalking horse bidder. (*Id.* at D.I. 572 at ¶¶ 13, 14) At the close of the bid deadline, debtors received no additional bids for the sale assets. (*Id.* at D.I. 570)

The equity committee filed an objection to the sale motion (*see id.* at D.I. 554, D.I. 597), but withdrew the objection after it conducted "extensive fact-finding as to the merits" of the sale, the "value of certain" of the sale assets, and "alternatives" to the sale, concluding that it could not find an alternative transaction that would assure a greater return to debtors. (*Id.* at D.I. 597) An evidentiary hearing on the matter was held on June 18, 2015, and the Bankruptcy Court approved the sale motion over Tuttle's objection. (*Id.* at D.I. 606, 607). Tuttle filed a motion for reconsideration of the order on July 28, 2015, after the sale had been consummated. (*Id.* at D.I. 643, D.I. 773)

C. Debtors' Plan and Amendments to the Plan

On April 24, 2015, debtors filed a joint Chapter 11 plan of reorganization and disclosure statement. (*Id.* at D.I. 251, 252) The plan of reorganization proposed a recovery to holders of canceled common stock, contingent on the class of such holders voting in favor of such plan, in the form of warrants that could convert into 10.0% of the new equity in the reorganized debtors. (*Id.* at D.I. 251 at § 2.16) The equity committee indicated it intended to object to the plan of reorganization's proposed treatment of holders of canceled common stock, and sought discovery related thereto. (*Id.* at D.I.

506 at ¶ 10) Debtors provided discovery to the equity committee. (*See* D.I. 793, ex. C at ¶¶ 8-12)

Following the filing of the plan of reorganization, debtors' business was negatively affected by numerous factors that severely impeded its mining operations including: (1) high employee turnover; (2) refusal by key vendors to contract with debtors on commercially reasonable terms; (3) gold and silver production levels failing to meet expectations; and (4) continuing decline in gold prices. (*See id.* at ¶¶ 6-7) On July 8, 2015, debtors commenced a plan to suspend mining operations at their sole revenue- generating mine, the Hycroft Mine, and terminated approximately 230 of the remaining 368 employees. (*See id.* at D.I. 919 at 17-19; D.I. 1100 at ¶¶ 10-12) According to appellees, due to the plan to suspend mining operations, debtors were unable to comply with several covenants and milestones in the RSA and, as a result, the RSA parties had the right to terminate the RSA. (*See* Civ. No. 15-946-SLR, D.I. 16; Civ. No. 15-949-SLR, D.I. 22 at 9) Thereafter, debtors negotiated certain amendments to the original RSA ("amended RSA") with the RSA parties and, on August 27, 2015, the Bankruptcy Court approved debtors' assumption of the amended RSA. (*Id.* at D.I. 926)

On July 23, 2015, debtors filed an amended joint Chapter 11 plan of reorganization and disclosure statement, both of which reflected the agreements reached in the amended RSA. (*Id.* at D.I. 756, 758) The amended plan of reorganization proposed no recovery to holders of canceled common stock. (*Id.* at D.I. 756 at § 2.14)

D. Global Settlement

On August 19, 2015, debtors and RSA parties announced they had reached a settlement ("global settlement"), with the remaining major constituencies in the Chapter 11 cases not parties to the amended RSA - the creditors committee and the equity committee. (*Id.* at D.I. 864) On August 27, 2015, debtors filed a second amended joint Chapter 11 plan of reorganization ("amended plan") and a second amended disclosure statement ("amended disclosure statement") that reflected the global settlement. (*Id.* at D.I. 931, D.I. 933) The amended plan proposed to provide debtors': (1) secured creditors a distribution in the form of new secured debt in the reorganized debtors ("new first lien term loans"); (2) unsecured creditors the option to receive a cash recovery or to receive privately traded common stock in the reorganized debtors ("new common stock"); and (3) canceled common stock holders a distribution in the form of new warrants. (*Id.* at D.I. 931 at Art. II) The creditors committee and equity committee supported confirmation of the amended plan. (*Id.*)

On August 28, 2015, the Bankruptcy Court entered the disclosure statement order. (*Id.* at D.I. 940) On September 8, 2015, on behalf of the ad hoc equity committee holders of canceled common stock, Tuttle filed an objection to debtors' notice of hearing with respect to the amended disclosure statement. (*Id.* at D.I. 969)

E. Examiner Motions

On August 11, 2015, Tuttle filed a motion to appoint an examiner, joined by Darga. (*Id.* at D.I. 819, 957 at n.1) Debtors, the creditors committee, and an ad hoc group of noteholders objected to the motion. (*Id.* at D.I. 957, 958, 960) The equity

committee also submitted a response to the motion and stated that it had "analyzed a multitude of potential claims against debtors, debtors' directors and officers, and third parties . . . . weighed its valuation analysis, operational analysis, and analysis of certain potential claims" and, based on its analysis, it "believes that the proposed [amended] plan provides existing equity holders with the best opportunity for a recovery given debtors' current circumstances." (*Id.* at D.I. 961, ¶ 2, 4)

Following a September 15, 2015 evidentiary hearing, the Bankruptcy Court entered an order that denied the motion to appoint an examiner. (*Id.* at D.I. 995, 1021) Tuttle filed a second motion to appoint an examiner on October 5, 2015, one day prior to the hearing to consider confirmation of the amended plan. (*Id.* at D.I. 1110) On January 20, 2016, after the notices of appeal in the instant cases were filed, the Bankruptcy Court denied the second motion to appoint an examiner on the grounds that the "second examiner motion is no different from [the] first examiner motion" and that confirmation of the amended plan on October 8, 2015 precluded the appointment of an examiner under the Bankruptcy Code. (*See* Civ. No. 15-946-SLR, D.I. 18 and Civ. No. 15-949, D.I. 24 at ex. 18 at 76:17-18; Bankr. No. 15-10503-MFW at D.I. 1372)

F. Confirmation of the Amended Plan

On September 24, 2015, Tuttle and Darga objected to the amended plan on the grounds that the amended plan undervalued debtors and that holders of canceled common stock were entitled to an additional recovery beyond the new warrants. (Bankr. No. 15-10503-MFW at D.I. 1048, D.I. 1049, D.I. 1114) A confirmation hearing was held on October 6, 2015. Testifying on behalf of debtors were Stephen M. Jones,

debtors' chief financial officer ("CFO"), and Klein. (*Id.* at D.I. 1149) Klein testified that the going concern enterprise value of the reorganized debtors, as of October 31, 2015, was in a range between $200 million and $300 million ("Moelis valuation"). (*See id.* at D.I. 1100) The Moelis valuation placed holders of canceled common stock out of the money by at least $350 million. (*Id.*) Tuttle cross-examined each of debtors' witnesses, (*see id.* at 16-32, 58-66, 70-89, 120-123), and Darga cross-examined debtors' CFO (*see id.* at 53-58).

Appellants objected to the amended plan, but did not proffer any witnesses or offer any competing valuation of debtors at the confirmation hearing. (Civ. No. 15-946-SLR, D.I. 18 and Civ. No. 15-949, D.I. 24 at ex. 17) Appellants argued that the Moelis valuation was too low and should be increased to enable greater distributions to holders of canceled common stock. (*See id.*)

In entering the confirmation order on October 8, 2015, the Bankruptcy Court found that the Moelis valuation was "reasonable, persuasive, credible and accurate." (*Id.* at D.I. 1136, ¶ 56) In response to appellants' objection to the recovery to holders of canceled common stock, the Bankruptcy Court explained that the "[appellants'] representative, the [e]quity [c]ommittee, has already negotiated the terms of the warrant on your behalf." (*Id.* at D.I. 1149 at 160:21-23) Finally, the Bankruptcy Court overruled Tuttle's oral motion to stay the confirmation hearing that he made at the confirmation hearing. (*Id.* at 114:23-24)

G. Amended Plan Implementation

On the October 22, 2015 effective date, the amended plan was consummated, and the reorganized debtors emerged from Chapter 11. (*Id.* at D.I. 1190) According to Jones, executive vice president, secretary, and CFO of Hycroft Mining Corp. (f/k/a Allied Nevada Gold Corp.) as well as CFO of the other reorganized debtors, the consummation of the amended plan triggered the following transactions and events: (1) debtors (i) repaid a portion of certain prepetition debt instruments and other secured obligations, and the DIP facility, (ii) rejected, among other things, certain capital lease obligations, and (iii) eliminated all then existing liens; (2) the reorganized debtors were formed and appointed their boards of directors and adopted new organizational documents; (3) the reorganized debtors dissolved certain prior business entities; (4) pursuant to a new credit agreement, the reorganized debtors incurred $126.7 million of new first lien term loans and have repaid approximately $780,000 of the new first lien term loans pursuant to terms of the credit agreement; (5) the reorganized debtors entered into a new indenture and issued approximately $95 million of new second lien convertible notes, since the effective date have issued an additional $15 million of new second lien convertible notes and, based on lending commitments from existing holders of such notes, the reorganized debtors have called for funding of an additional $5 million of new second lien convertible notes; (6) the reorganized debtors effectuated an interim distribution of new common stock to holders of allowed general unsecured claims entitled to receive such stock under the amended plan, reserved the remainder of such stock for distribution pending further claims reconciliation, entered into a stockholders agreement with the recipients of the new common stock and, to date, at least one

shareholder has received the reorganized debtors' approval (as required by the stockholders agreement) to trade the new common stock to a third party; (7) the reorganized debtors issued 100% of the new warrants to holders of the canceled common stock and holders of subordinated securities claims (as defined in the amended plan), and entered into the associated new warrant agreement (as defined in the amended plan); and (8) the reorganized debtors distributed approximately $1.8 million of cash to satisfy (i) allowed Bankruptcy Code § 503(b)(9) claims, and (ii) cure obligations with respect to assumed executory contracts and unexpired leases. (*See* Civ. No. 15-946-SLR, D.I. 19 and Civ. No. 15-949-SLR, D.I. 25 at ¶ 3)

III. STANDARD OF REVIEW

In undertaking a review of the issues on appeal, the District Court applies a clearly erroneous standard to the Bankruptcy Court's findings of fact and a plenary standard to that court's legal conclusions. *See American Flint Glass Workers Union v. Anchor Resolution Corp.*, 197 F.3d 76, 80 (3d Cir. 1999). With mixed questions of law and fact, the District Court must accept the Bankruptcy Court's "finding of historical or narrative facts unless clearly erroneous, but exercise[s] 'plenary review of the [Bankruptcy] Court's choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" *Mellon Bank, N.A. v. Metro Commc'ns, Inc.*, 945 F.2d 635, 642 (3d Cir. 1991) (citing *Universal Minerals, Inc. v. C.A. Hughes & Co.*, 669 F.2d 98, 101-02 (3d Cir. 1981)). The District Court's appellate responsibilities are further informed by the directive of the United States Court of Appeals for the Third Circuit, which effectively reviews on a *de novo* basis Bankruptcy Court opinions. *See In*

re Hechinger, 298 F.3d 219, 224 (3d Cir. 2002); *In re Telegroup*, 281 F.3d 133, 136 (3d Cir. 2002). A factual finding is clearly erroneous when "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *In re Cellnet Data Sys., Inc.*, 327 F.3d 242, 244 (3d Cir. 2003) (citing *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witness." Fed. R. Bankr. P. 8013.

IV. ISSUES RAISED ON APPEAL[4]

The ad hoc committee of shareholders raise the following issues for review:[5]

(1) Whether the Bankruptcy Court committed an error of law or an abuse of discretion in overruling Tuttle's August 11, 2015 motion to appoint an examiner with access to and authority to disclose privileged materials through its order entered on September 15, 2015 (Bankr. No. 15-10503-MFW, D.I. 995).

(2) Whether the Bankruptcy Court committed an error of law or an abuse of discretion in confirming debtors' amended disclosure statement on August 28, 2015 (*id.* at D.I. 940).

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[4]Appellees contend that certain issues raised on appeal were not timely filed. (*See* Civ. No. 15-946-SLR, D.I. 16, and Civ. No. 15-949-SLR, D.I. 22 at 21)

[5]*See* Civ. No. 15-946 at D.I. 1, 11.

(3) Whether the Bankruptcy Court committed an error of law or an abuse of discretion when, on September 15, 2015, it confirmed the amended plan of reorganization filed on August 27, 2015.

Tuttle raises the following issues on appeal:[6]

(1) Whether the Bankruptcy Court committed an error of law or abuse of discretion in the findings of fact, conclusions of law, and order confirming debtors' amended joint Chapter 11 plan of reorganization (Bankr. No. 15-10503-MFW, D.I. 1136).

(2) Whether the Bankruptcy Court committed an error of law or abuse of discretion in denying the party of interest's motion to appoint an examiner with access to and authority to disclose privileged materials (*id.* at 819) and second motion to appoint an examiner with access to and authority to disclose privileged materials including without limitation (*id.* at D.I. 1110).

(3) Whether the Bankruptcy Court committed an error of law or abuse of discretion by overruling the ad hoc committee's objection to debtors' notice of hearing (*id.* at D.I. 969).

V. DISCUSSION

Appellees argue that the appeal should be dismissed by reason of equitable mootness. Appellants respond that the equitable mootness doctrine is unconstitutional[7]

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[6]*See* Civ. No. 15-949 at D.I. 1, 16.

[7]The constitutionality of the equitable mootness doctrine was raised in *In re One2One Commc'ns, LLC*, 805 F.3d 428 (3d Cir. 2015). As stated by the Third Circuit, "[b]ecause we have already approved the doctrine of equitable mootness in *Continental*, only the court sitting en banc would have the authority to reevaluate our

and the appeal is not equitably moot.[6] Appellants contend that appellees fail to provide a concrete showing of how appellants' requested relief (*i.e.*, "merely to retain stock in the reorganized company") would produce significant harm to other parties or produce an unwieldy situation for the Bankruptcy Court. (*See* Civ. No. 15-946-SLR at D.I. 22; Civ. No. 15-949-SLR at D.I. 20) Finally, appellants argue that any order vacating confirmation of the plan of reorganization does not have the ability to affect the success of the plan because the plan proposed "was nothing more than a visionary scheme." (*Id.*) As discussed below, the court finds appellants' position unavailing.

"'Equitable mootness' is a narrow doctrine by which an appellate court deems it prudent for practical reasons to forbear deciding an appeal when to grant the relief requested will undermine the finality and reliability of consummated plans of reorganization." *In re Tribune Media Co.*, 799 F.3d 272, 277 (3d Cir. 2015). "The party seeking to invoke the doctrine (*i.e.*, appellees) bears the burden of overcoming the strong presumption that appeals from confirmation orders of reorganization plans--even

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prior holding. This court may only decline to follow a prior decision of our court without the necessity of an en banc decision when the prior decision conflicts with a Supreme Court decision." *Id.* at 433 (citations omitted). In *One2One*, appellant argued that equitable mootness jurisprudence should be reevaluated in light of the Supreme Court's decision in *Stern v. Marshall*, 564 U.S. 462 (2011). The Third Circuit stated that *Stern*, alone, did not permit it to depart from *Continental*. *Id.*

[6]Most of the issues raised by appellants contain subparts that challenge whether appellees satisfied the good faith requirements of § 1129(a) of the Bankruptcy Code. A challenge to the good faith requirement under § 1129(a)(3) significantly impacts the confirmation plan because the good faith requirement is "a condition of plan confirmation." *See In re Combustion Eng'g, Inc.*, 391 F.3d 190, 246 (3d Cir. 2004) ("As a condition of plan confirmation, a debtor must propose a plan of reorganization 'in good faith and not by any means forbidden by law.'") (citing 11 U.S.C. § 1129(a)(3)). Regardless, as will be discussed, the factors considered by the court favor equitable mootness and dismissal of the appeals.

those not only approved by confirmation but implemented thereafter (called "substantial consummation" or simply "consummation")--need to be decided." *Id.* at 277-78 (citing *In re SemCrude, L.P.*, 728 F.3d 314, 321 (3d Cir. 2013)).

The Third Circuit first recognized the doctrine of equitable mootness in *In re Continental Airlines*, 91 F.3d 553 (3d Cir. 1996) (en banc). The majority opinion noted certain factors to consider "in making a mootness call:"

> Factors that have been considered by courts in determining whether it would be equitable or prudential to reach the merits of a bankruptcy appeal include (1) whether the reorganization plan has been substantially consummated, (2) whether a stay has been obtained, (3) whether the relief requested would affect the rights of parties not before the court, (4) whether the relief requested would affect the success of the plan, and (5) the public policy of affording finality to bankruptcy judgments.

In re Tribune Media Co., 799 F.3d at 278 (quoting *In re Continental Airlines*, 91 F.3d at 560 (citation omitted).

Over the years, Third Circuit precedential opinions have refined the doctrine. As explained in *Tribune*, "equitable mootness . . . proceed[s] in two analytical steps: (1) whether a confirmed plan has been substantially consummated; and (2) if so, whether granting the relief requested in the appeal will (a) fatally scramble the plan and/or (b) significantly harm third parties who have justifiably relied on plan confirmation." *In re Tribune* 799 F.3d at 278 (citing *In re SemCrude*, 728 F.3d at 321). If the confirmed plan has been substantially consummated, the court next determines whether granting relief will require undoing the plan as opposed to modify it in a manner that does not cause its collapse. *In re One2One Communications, LLC*, 805 F.3d at 435.

The court concludes that the factors considered weigh in favor of applying the equitable mootness doctrine. First, the plan has been substantially consummated. "Substantial consummation" is defined as the:

> (A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan.

11 U.S.C. § 1101(2).

The Jones declaration submitted by appellees states that, as of the October 22, 2015 effective date, a number of transactions and events had occurred, including: (1) debtors transferred substantially all of their property under the amended plan by satisfying certain debt instruments and other secured obligations in accordance with the terms thereof, eliminating all then-existing liens, and dissolving certain business entities; (2) reorganized debtors succeeded to debtors' assets, appointed new boards of directors, and adopted new organizational documents; and (3) distributions under the amended plan commenced. In addition, reorganized debtors have incurred new first lien term loans, issued new second lien convertible notes and new warrants, have entered into a stockholders agreement, and distributed a significant amount of the new common stock to holders of general unsecured claims entitled thereto, and some new common stock has been sold to a third party. Finally, reorganized debtors have distributed approximately $1.8 million of cash to satisfy allowed Bankruptcy Code § 503(b)(9) claims and to cure payments with respect to assumed executory contracts and unexpired leases.

Also, no stay has been obtained. A stay was sought on October 21, 2015, one day prior to the effective date, and it was denied on January 22, 2016.[9] (*See* Bankr. No. 15-10503-MFW at D.I. 1172, 1373) "The existence or absence of a stay is a critical factor in determining whether to dismiss an appeal under the doctrine of equitable mootness." *In re Grand Union Co.*, 200 B.R. 101, 105 (citing *Continental*, 91 F.3d at 561-63). Indeed, the absence of a stay is so critical to the analysis that even the unsuccessful pursuit of a stay may favor a finding of equitable mootness. *See Continental*, 91 F.3d at 562 ("'[A] stay not sought, and a stay sought and denied, lead equally to the implementation of the plan of reorganization.'") (quoting *Matter of UNR Indus., Inc.*, 20 F.3d 766, 770 (7th Cir. 1994)). Where no stay has been obtained, the reorganization plan goes forward, and it is difficult to undo the acts of third parties proceeding under the plan without prejudicing those third parties. *See generally Continental*, 91 F.3d at 561–63; *In re Highway Truck Drivers & Helpers Local Union No. 107*, 888 F.2d 293, 297 (3d Cir. 1989). Such is the case here.

The amended plan at bar involved intricate transactions, and appellees (who bear the burden to demonstrate that prudential factors weigh in their favor, *see In re Semcrude*, 728 F.3d at 321) submitted the Jones declaration which provides ample evidence that it would be difficult to unravel or retract the amended plan. The amended plan was the result of compromises and agreements that took place over many months among debtors, RSA parties, the creditors committee, and the equity committee. The

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[9]The denial of the motion to stay is the subject of the third bankruptcy appeal filed by Tuttle on February 1, 2016, *Tuttle v. Allied Nevada Gold Corp.*, Civ. No. 16-058-SLR.

record as above described reflects that this case involves a sufficiently complex reorganization. *See Continental*, 91 F.3d at 560-61 (reversal of a confirmation order is more likely to lead to an inequitable result "where the reorganization involves intricate transactions or where outside investors have relied on the confirmation of the plan"); *see also Nordhoff Investments, Inc. v Zenith Electronics Corp.*, 258 F.3d 180, 186 (3d Cir. 2001) (finding that plan that involved hundreds of millions of dollars, the issuance of unretractable bonds, and restructuring the debt, assets, and management of a major corporation "could [not] be reversed without great difficulty and inequity").

Appellants' primary objection is that they are entitled to a greater recovery because the amended plan does not sufficiently value debtors and, in turn, holders of canceled common stock who include appellants. However, appeals challenging plan valuations on this basis have been rejected under the doctrine of equitable mootness because the proposed relief (*i.e.*, revaluation of the company) would "likely topple the delicate balances and compromises struck by the [p]lan." *Grimes v. Genesis Health Ventures, Inc.*, 280 B.R. 339, 346 (D. Del. 2002); *see also Tribune*, 799 F.3d 281 (holding appeal is equitably moot because relief requested would "effectively undermine the [s]ettlement" underlying the plan and, "as a result, recall the entire plan for a redo").

In addition, appellants' requested relief would detrimentally affect the rights of numerous third parties not before the court. Equitable mootness "protects the interests of non-adverse third parties who are not before the reviewing court but who have acted in reliance upon the plan as implemented." *Continental*, 91 F.3d at 362 (citation omitted). The requested relief would adversely affect third parties that acted in reliance

on the amended plan's confirmation, including exit funding lenders as well as recipients of the distributions and issuances of new common stock and new warrants and parties who may have obtained the instruments through trades on the open market. In addition, through required approvals in accordance with the stockholders agreement, there has been one trade of the new common stock to a third party.

Finally, public policy favors dismissal. "The public policy of affording finality to bankruptcy judgments is . . . the lens through which the other equitable mootness factors should be viewed." *Nordhoff*, 258 F.3d at 190. There is a "strong public policy in favor of maximizing debtors' estates and facilitating successful reorganization" in bankruptcy proceedings. *Continental*, 91 F.3d at 565. "[T]he importance of allowing approved reorganizations to go forward in reliance on bankruptcy court confirmation orders may be the central animating force behind the equitable mootness doctrine." *Id.* Given the number of parties involved in the negotiation, approval, and substantial consummation of the amended plan, the court concludes that public policy favors leaving the amended plan undisturbed, appellants' objections notwithstanding.

VI. CONCLUSION

For the above reasons, the court will deny Tuttle's motions to consolidate the appeals, Civ. No. 15-946-SLR at D.I. 26; Civ. No. 15-949-SLR at D.I. 32. In addition, based on the reasoning above, the court concludes that the relevant factors weigh in favor of dismissing the instant appeals on the grounds of equitable mootness.

An appropriate order shall follow.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Allied Nevada Gold Corp., *et al.*,[1]	)	Case No. 15-10503 (MFW)
Reorganized Debtors.	)	Jointly Administered
	)	**Related Docket Nos.: 1049, 1050, 1110, 1112, 1166, 1167, 1172, 1173, 1174, 1205, 1206, 1258, 1343, 1345, 1346, 1348 1357, 1358, 1359 & 1372**

OMNIBUS ORDER DENYING SHAREHOLDER MOTIONS

Upon the Court's consideration of the following motions and applications (collectively, the "***Shareholder Motions***"):

(a) Brian Tuttle's Motion for Standing to Prosecute [Docket No. 1049; filed 9/24/2015];

(b) Brian Tuttle's Motion for Leave of Court to Take Depositions Upon Written Questions [Docket No. 1050; filed 9/24/2015];

(c) Brian Tuttle's Second Motion to an Appoint Examiner with Access to and Authority to Disclose Privileged Materials [Docket No. 1110; filed 10/5/2015];

(d) Application for Reimbursement of Expenses Incurred by Party of Interest Brian Tuttle [Docket No. 1112; filed 10/5/2015];

(e) Brian Tuttle's Motion for Stay of this Court's Order Confirming Debtors' Amended Joint Chapter 11 Plan of Reorganization [Docket No. 1172; filed 10/21/2015];

(f) Brian Tuttle's Motion for Reconsideration on Findings of Fact, Conclusions of Law and Order Confirming Debtors' Amended Joint Chapter 11 Plan of Reorganization [Docket No. 1173; filed 10/21/2015];

(g) Brian Tuttle's Motion for Reconsideration on Brian Tuttle's Oral Motion to Stay the Proceedings [Docket No. 1174; filed 10/21/2015];

[1] The Reorganized Debtors, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: Allied Nevada Gold Corp. (n/k/a Hycroft Mining Corporation) (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 Reorganized Debtors are located at, and the mailing address for each of the above Reorganized 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.

(h) Jordan Darga's Motion for Jury Trial or in the Alternative Motion for Rehearing [Docket No. 1205; filed 10/21/2015];

(i) Stoyan Tachev's Motion for Jury Trial or in the Alternative Motion for Rehearing [Docket No. 1206; filed 10/21/2015];

(j) Brian Tuttle's Second Motion to Compel [Docket No. 1343; filed 1/4/2016];

(k) Brian Tuttle's Motion for Order Authorizing Rule 2004 Examinations [Docket No. 1345; filed 1/4/2016];

(l) Brian Tuttle's Motion for an Order Recognizing the Ad Hoc Committee of Equity Security Holders as an Official Committee [Docket No. 1346; filed 1/4/2016]; and

(m) Brian Tuttle's Motion to Compel Non Party to Produce Documents [Docket No. 1348; filed 1/4/2016];

and upon the Court's consideration of (a) the various objections and responses thereto, including, without limitation, the objections and responses of the Reorganized Debtors, the United States Trustee, the Ad Hoc Group of Senior Unsecured Noteholders and Computershare, Inc. (collectively, the "***Objections***"), and (b) the evidence presented to the Court at the hearing held on January 20, 2016; and the Court having jurisdiction to consider the Shareholder Motions, the Objections and the relief requested therein in accordance with 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; and consideration of the Shareholder Motions, the Objections 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 Shareholder Motions and the Objections being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the Shareholder Motions and the Objections; and upon the record of the hearing and all proceedings had before the Court; and the Court having considered the legal and factual bases set forth in the Shareholder Motions and the Objections; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED**:

1. Each of the Shareholder Motions is DENIED.

2. This Order shall be deemed a separate order with respect to each of the Shareholder Motions.

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

Dated: January 22, 2016
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Allied Nevada Gold Corp., *et al.*,[1]	Case No. 15-10503 (MFW)
Debtors.	Jointly Administered
	Re: Docket Nos. 931, 933, 1024, 1060, 1100, 1103, 1107, 1122, 1134 & 1135

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING DEBTORS' AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION

The above-captioned debtors and debtors in possession (collectively, the "***Debtors***") having, in each case on the terms and to the extent set forth in the applicable pleadings and orders:[2]

i. filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on March 10, 2015 (the "***Petition Date***");

ii. continued to operate their business and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108, and no trustee or examiner having been appointed in the Chapter 11 Cases;

iii. filed the *Debtors' Motion for Entry of Interim and Final Orders: (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364 Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use*

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[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] Unless otherwise noted, capitalized terms not defined in this order (the "***Confirmation Order***") shall have the meanings ascribed to them in the *Debtors' Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 931], as may be altered, modified or supplemented from time to time in accordance with the terms thereof, the Bankruptcy Code, the Bankruptcy Rules, the Amended and Restated Restructuring Support Agreement and the Exit Facility Commitment Letter (the "***Amended Plan***"). The rules of interpretation set forth in Article I.A of the Amended Plan shall apply to this Confirmation Order.

DDD. Immediately Effective Order

82. Notwithstanding Bankruptcy Rules 3020(e), 6004(h) and 7062 (and notwithstanding any other applicable provision of the Bankruptcy Code or the Bankruptcy Rules to the contrary), this Confirmation Order shall be effective and enforceable immediately upon entry.

EEE. Final Order

83. This Confirmation Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

Dated: Oct. 8, 2015
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Allied Nevada Gold Corp., *et al.*,[1]	)	Case No. 15-10503 (MFW)
Debtors.	)	Jointly Administered
	)	**Related Docket Nos.: 819, 993**

ORDER DENYING MOTION TO APPOINT AN EXAMINER WITH ACCESS TO AND AUTHORITY TO DISCLOSE PRIVILEGED MATERIALS

Upon Brian Tuttle's *Motion to Appoint an Examiner with Access to and Authority to Disclose Privileged Materials* [Docket No. 819] (the "***Motion***"), the various briefs in support of the Motion [Docket Nos. 970, 972, 975, 978 and 981] (collectively, the "***Briefs***") and the various objections and responses thereto [Docket Nos. 831, 957, 958, 960, 961, 962, 963 and 964] (collectively, the "***Responses***"); and the Court having jurisdiction to consider the Motion, the Briefs and the Responses and the relief requested therein in accordance with 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; and upon consideration of the Motion, the Briefs and the Responses 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, the Briefs and the Responses

[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.

being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the Motion, the Briefs and the Responses; and upon the record of the hearing and all proceedings had before the Court; and the Court having considered the legal and factual bases set forth in the Motion, the Briefs and the Responses; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is DENIED.

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

Wilmington, Delaware
Dated: September 15, 2015

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 16-3745, 16-3746, 17-1513

In re: ALLIED NEVADA GOLD CORP., et al., Debtors

BRIAN TUTTLE,
Appellant

On Appeal from the United States District Court
for the District of Delaware
(D.C. Nos. 1-15-cv-00946, 1-15-cv-00949, and 1-16-cv-00058)
District Judge: Hon. Sue L. Robinson

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE, RESTREPO, BIBAS, and GREENBERG,* Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT

s/ Kent A. Jordan
Circuit Judge

DATED: May 9, 2018
tmm/cc: Mr. Brian Tuttle
Christopher W. Carty, Esq.

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* Judge Greenberg's vote is limited to panel rehearing only.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2, Clause 1 of the United States Constitution provides in part: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority."

28 U.S.C. § 158(a) provides:

> The district courts of the United States shall have jurisdiction to hear appeals
>
> (1) from final judgments, orders, and decrees;
>
> (2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and
>
> (3) with leave of the court, from other interlocutory orders and decrees;
>
> and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

28 U.S.C. § 158(d) provides:

> (1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.
>
> (2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—
>
> > (i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;
> >
> > (ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or
> >
> > (iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;
>
> and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.
>
> (B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—
>
> > (i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or
> >
> > (ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);
>
> then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

(C) The parties may supplement the certification with a short statement of the basis for the certification.

(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal.

(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.