

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

In Re:

Case No.: _____

Chapter: _____

Hearing Date: _____

Judge: _____

**APPLICATION FOR AN ORDER AUTHORIZING RETENTION OF
CLAIMS AND NOTICING AGENT FOR THE DEBTORS
UNDER 28 U.S.C. § 156(c), 11 U.S.C. § 105(a)
AND GENERAL ORDER GOVERNING PROTOCOL
FOR THE RETENTION OF CLAIMS AND NOTICING AGENTS
UNDER 28 U.S.C. § 156(c) PENDING ADOPTION OF LOCAL RULE**

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”) hereby move for entry of an order, substantially in the form of Exhibit C hereto (the “Retention Order”) pursuant to Section 156(c) of title 28 of the United States Code and Section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), appointing _____ as claims and noticing agent (“Claims and Noticing Agent”) in the debtors’ cases (the “Section 156(c) Application”). In support of the Section 156(c) Application, the debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On _____, 20__ (the “Petition Date”), the debtors filed separate voluntary petitions under Chapter 11 of the Bankruptcy Code. The debtors continue to operate their businesses and manage their properties as debtors in possession, pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

3. Pursuant to a separate application filed on the Petition Date, the debtors requested joint administration of the debtors’ estates, as provided for in Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

4. The debtors are engaged in _____ [type of business] and currently employ _____ people at all of their locations. [*Insert other pertinent information about the Debtors business here.*]

RELIEF REQUESTED

5. This Section 156(c) Application is made pursuant to 28 U.S.C. § 156(c), Section 105(a) of the Bankruptcy Code and *General Order Governing Protocol for the Retention of Claims and Noticing Agents Under 28 U.S.C. Section 156(c) Pending Adoption of Local Rule* for an order appointing Claims and Noticing Agent to act as the claims and noticing agent in order to assume full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the debtors’ cases. The debtors’ selection of Claims and Noticing Agent to act as the claims and noticing agent has satisfied the court’s ***Protocol for the Retention of Claims and Noticing Agents under 28 U.S.C. § 156(c)***, in that the debtors have obtained and reviewed engagement proposals from at least two (2) other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the debtors submit, based on all engagement proposals obtained and reviewed, that Claims and Noticing Agent’s rates are competitive and reasonable given Claims and Noticing Agent’s quality of services and expertise. The terms of retention are set forth in the Engagement Agreement annexed hereto as Exhibit A (the “Engagement Agreement”); provided, however, that Claims and Noticing Agent is seeking approval solely of the terms and provisions as set forth in this Application and the proposed order attached hereto.

6. Although the debtors have not yet filed their schedules of assets and liabilities, they anticipate that there will be in excess of _____ entities to be noticed. In view of the number of anticipated claimants and the complexity of the debtors' businesses, the debtors submit that the appointment of a claims and noticing agent is both necessary and in the best interests of both the debtors' estates and their creditors.

7. Claims and Noticing Agent has acted as the claims and noticing agent in numerous cases of comparable size, including several cases currently pending in the United States Bankruptcy Court for this District. [LIST REPRESENTATIVE CASE CITATIONS] ¹

8. By appointing Claims and Noticing Agent as the claims and noticing agent in these cases, the distribution of notices and the processing of claims will be expedited, and the clerk's office will be relieved of the administrative burden of processing what may be an overwhelming number of claims. In support of this Section 156(c) Application, the debtors submit the Claims and Noticing Agent's affidavit attached hereto as Exhibit B (the "Claims and Noticing Agent Affidavit").

9. This Section 156(c) Application pertains only to the work to be performed by Claims and Noticing Agent under the clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and *General Order Governing Protocol for the Retention of Claims and Noticing Agents Under 28 U.S.C. Section 156(c) Pending Adoption of Local Rule*, and any work to be performed by Claims and Noticing Agent outside of this scope is not covered by this Section 156(c) Application or by any Order granting approval hereof. Specifically, Claims and Noticing Agent will perform the following tasks in its role as claims and noticing agent (the "Claims and Noticing Services"), as well as all quality control relating thereto:

- (a) Prepare and serve required notices and documents in the cases in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") in the form and manner directed by the debtors and/or the court, including (i) notice of the commencement of the cases and the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the debtors' plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice

¹ Because of the voluminous nature of the orders cited herein, they are not attached to the Section 156(c) Application. Copies of these orders, however, are available on request of the debtors' proposed counsel.

of the effective date of any plan and (vii) all other notices, orders, pleadings, publications and other documents as the debtors or court may deem necessary or appropriate for an orderly administration of the cases.

- (b) Maintain an official copy of the debtors' schedules of assets and liabilities and statement of financial affairs (collectively, "schedules"), listing the debtors' known creditors and the amounts owed thereto;
- (c) Maintain (i) a list of all potential creditors, equity holders and other parties-in-interest; and (ii) a "core" mailing list consisting of all parties described in sections 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update said lists and make said lists available upon request by a party-in-interest or the clerk;
- (d) Furnish a notice to all potential creditors of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- (e) Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- (f) For *all* notices, motions, orders or other pleadings or documents served, prepare and file or caused to be filed with the clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket numbers(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- (g) Process all proofs of claim received, including those received by the clerk's office, and check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- (h) Maintain the official claims register for each debtor (the "Claims Registers")

on behalf of the clerk; upon the clerk's request, provide the clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), (vi) the applicable debtor, and (vii) any disposition of the claim;

- (i) Provide public access to the Claims Registers, including complete proofs of claim with attachments, if any, without charge;
- (j) Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- (k) Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- (l) Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of Claims and Noticing Agent, not less than weekly;
- (m) Upon completion of the docketing process for all claims received to date for each case, turn over to the clerk copies of the claims register for the clerk's review (upon the clerk's request);
- (n) Monitor the court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register;
- (o) Assist in the dissemination of information to the public and respond to requests for administrative information regarding the case as directed by the debtors or the court, including through the use of a case website and/or call center.
- (p) If the case is converted to Chapter 7, contact the clerk's office within three (3) days of the notice to Claims and Noticing Agent of entry of the order converting the case;
- (q) Thirty (30) days prior to the close of these cases, to the extent practicable,

request that the debtors submit to the court a proposed order dismissing the Claims and Noticing Agent and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of these cases; and

- (r) Within seven (7) days of notice to Claims and Noticing Agent of entry of an order closing the Chapter 11 cases, provide to the court the final version of the claims register, a digital version of all claims, and the creditor mailing matrix as of the date immediately before the close of the cases.

10. The Claims Registers shall be opened to the public for examination without charge during regular business hours and on a case-specific website maintained by Claims and Noticing Agent.

11. Claims and Noticing Agent shall not employ any past or present employee of the debtors for work that involves the debtors' bankruptcy cases.

12. The debtors respectfully request that the undisputed fees and expenses incurred by Claims and Noticing Agent in the performance of the above services be treated as administrative expenses of the debtors' estates pursuant to 28 U.S.C. § 156(c) and 11 U.S.C. § 503(b)(1)(A) and be paid in the ordinary course of business without further application to or order of the court. Claims and Noticing Agent agrees to maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and to serve monthly invoices on the debtors, the office of the United States Trustee, counsel for the debtors, counsel for any official committee, if any, monitoring the expenses of the debtors and any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Engagement Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the court.

13. Prior to the Petition Date, the debtors provided Claims and Noticing Agent a retainer in the amount of \$_____. Claims and Noticing Agent seeks to first apply the retainer to all pre-petition invoices, and thereafter, to have the retainer replenished to the original retainer amount, and thereafter, to hold the retainer under the Engagement Agreement during the cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

14. In connection with its retention as claims and noticing agent, Claims and Noticing

Agent represents in the Claims and Noticing Agent Affidavit, among other things, that:

- (a) Claims and Noticing Agent will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the claims and noticing agent in the cases;
- (b) By accepting employment in the cases, Claims and Noticing Agent waives any rights to receive compensation from the United States government in connection with the debtors' cases;
- (c) In its capacity as the claims and noticing agent in the cases, Claims and Noticing Agent will not be an agent of the United States and will not act on behalf of the United States; and
- (d) It is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged.

15. To the extent that there is any inconsistency between this Application, the Retention Order and the Engagement Agreement, the Retention Order shall govern.

16. This Section 156(c) Application complies with the ***Protocol for the Retention of Claims and Noticing Agents under 28 U.S.C. § 156(c)*** and conforms to the standard Section 156(c) Application in use in this court. The debtors have provided copies of this Section 156(c) Application to the clerk of court and to the United States Trustee [ADD ADDITIONAL NOTICE PARTIES AS APPROPRIATE] and submit that no further notice is necessary under the circumstances.

WHEREFORE, the debtors request entry of an order, in the form annexed hereto as Exhibit C, authorizing _____ to act as claims and noticing agent for the maintenance and processing of claims and the distribution of notices.

Date: _____, 20____ Attorneys for Debtors or Debtors in Possession

Signature