

ORIGINAL

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

In re:

SCHOOL SPECIALTY, INC., *et al.*,
Debtors.¹

Chapter 11

Case No 13-10125 (KJC)

Joint Administration Requested

Re: Docket No. 4

**ORDER AUTHORIZING AND APPROVING THE APPOINTMENT OF KURTZMAN
CARSON CONSULTANTS LLC AS CLAIMS AND NOTICING AGENT FOR THE
DEBTORS PURSUANT TO 28 U.S.C. § 156(c), SECTION 105(a) OF THE
BANKRUPTCY CODE, BANKRUPTCY RULE 2002(f) AND LOCAL RULE 2002-1(f)**

Upon the application (the “Section 156(c) Application”)² of School Specialty, Inc. and its affiliated debtors and debtors in possession in the above-captioned cases (each a “Debtor” and, collectively, the “Debtors”), for an order authorizing the retention and appointment of Kurtzman Carson Consultants LLC (“KCC”) as claims and noticing agent (“Claims and Noticing Agent”), under 28 U.S.C. § 156(c), section 105(a) of the Bankruptcy Code, Bankruptcy Rule 2002(f) and Local Rule 2002-1(f), to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket and otherwise administer the proofs of claim filed in the Debtors’ cases, and (iii) provide such other administrative services—as required by the Debtors—that would fall within the purview of services to be provided by the Clerk’s Office and upon the Affidavit of Albert Kass submitted in support of the Section 156(c) Application; and the Debtors having estimated that there are in excess of 16,000 creditors and parties in

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors’ corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

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



interest in these cases, many of which are expected to file proofs of claim; and it appearing that the receiving, docketing and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and the Court being authorized under 28 U.S.C. §156(c) to utilize, at the Debtors' expense, outside agents and facilities to provide notices to parties in chapter 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim; and the Court being satisfied that KCC has the capability and experience to provide such services and does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157 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 it appearing that the Debtors have complied with the *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)* dated February 1, 2012; and it appearing that adequate and proper notice of this Section 156(c) Application has been given and that no other or further notice need be given; and it appearing that the employment of KCC is in the best interests of the Debtors, their estates and creditors; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. Notwithstanding the terms of the Engagement Letter attached to the Section 156(c) Application, the Section 156(c) Application is approved solely as set forth in this Order.

2. The Debtors are authorized to retain KCC effective *nunc pro tunc* to the Petition Date under the terms of the Engagement Agreement, and KCC is authorized and directed to perform noticing services and to receive, maintain, record and otherwise administer the proofs of claim filed in these cases, and all related tasks, all as described in the Section 156(c) Application (the "Claims and Noticing Services").

3. Section II(E) of the Engagement Letter (addressing late charges) shall be null, void and of no further force and effect for post-petition services rendered by KCC prior to consummation of a chapter 11 plan.

4. KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these cases and is authorized and directed to maintain official Claims Registers for each of the Debtors and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

5. KCC is authorized and directed to obtain a post office box or address for the receipt of proofs of claim.

6. KCC is authorized to take such other action to comply with all duties set forth in the Section 156(c) Application.

7. The Debtors are authorized to compensate KCC in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for KCC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

8. KCC shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel to the Debtors' postpetition secured lenders, 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.

9. Parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices, and that the parties may seek resolution of the matter from the Court if resolution is not achieved.

10. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC under this Order shall be an administrative expense of the Debtors' estates.

11. KCC may apply its retainer to all prepetition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, KCC may hold its retainer under the Engagement Agreement during the Chapter 11 Cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

12. The Debtors shall indemnify KCC under the terms of the Engagement Agreement, as modified by paragraphs 12, 13 and 14 below.

13. KCC shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court.

14. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from KCC's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of KCC's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to In re United Artists Theatre Co., 315 F.3d 217 (3d Cir. 2003), or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice

and a hearing, to be a claim or expense for which KCC should not receive indemnity, contribution or reimbursement under the terms of the Engagement Agreement as modified by this Order.

15. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing these Chapter 11 Cases, KCC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Agreement (as modified by this Order), including without limitation the advancement of defense costs, KCC must file an application therefore in this Court, and the Debtors may not pay any such amounts to KCC before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by KCC for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify KCC. All parties in interest shall retain the right to object to any demand by KCC for indemnification, contribution or reimbursement.

16. Notwithstanding anything to the contrary contained in the Engagement Agreement or the Application, KCC's liability shall not be limited to (i) the total amount billed or billable to the Debtors for the portion of the particular work which gave rise to the loss or damage or (ii) the total amount billed to the Debtors and paid to KCC for services contemplated under the Engagement Letter.

17. In the event KCC is unable to provide the services set out in this Order, KCC will immediately notify the Clerk and Debtors' counsel and cause to have all original proofs of claim

and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and Debtors' counsel.

18. If any of these Chapter 11 Cases convert to cases under chapter 7 of the Bankruptcy Code, KCC shall continue to be paid by the estates for its services under the terms of the Engagement Letter, until such time KCC is released from its duties by the Court; provided, however, that nothing in this Order obligates a successor chapter 7 or chapter 11 trustee to employ KCC.

19. The Debtors may submit a separate retention application, pursuant to 11 U.S.C. § 327 and/or any applicable law, for work that is to be performed by KCC but is not specifically authorized by this Order.

20. The Debtors and KCC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Section 156(c) Application.

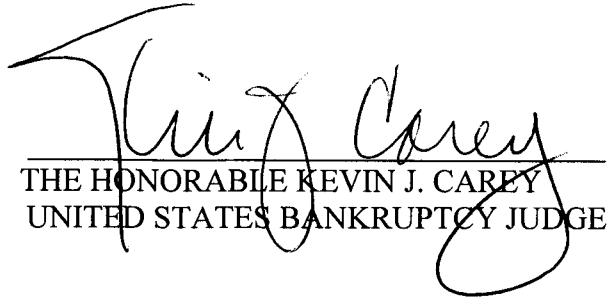
21. KCC shall not cease providing claims processing services during the Chapter 11 Cases for any reason, including nonpayment, without an order of the Court.

22. In the event of any inconsistency between the Engagement Agreement, the Section 156(c) Application and the Order, the Order shall govern.

23. Notwithstanding anything to the contrary contained in this Order, the Application or the Engagement Letter, any payment, obligation or other relief authorized by this Order shall be subject to and limited by the requirements imposed on the Debtors under the terms of any interim and/or final orders approving the DIP Financing.

24. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order and/or the Engagement Letter.

Dated: January 30, 2013
Wilmington, Delaware



THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE