

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

In re:

WELDED CONSTRUCTION, L.P., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 18-12378 (KG)
)
) (Jointly Administered)
)
) **Hearing Date:**
) **November 19, 2018 at 11:00 a.m. (ET)**
)
) **Objection Deadline:**
) **November 13, 2018 at 4:00 p.m. (ET)**

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING THE DEBTORS TO RETAIN,
EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED IN THE
ORDINARY COURSE OF BUSINESS, EFFECTIVE AS OF THE PETITION DATE**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) hereby submit this motion (this “**Motion**”) for the entry of an order, substantially in the form attached hereto as Exhibit C (the “**Proposed Order**”), pursuant to sections 105(a), 327, 328, and 330 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), authorizing, but not directing, the Debtors to retain, employ, and compensate certain professionals utilized in the ordinary course of business, effective as of the Petition Date (as defined below). In support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (the “**Amended Standing Order**”).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.



Venue of the Debtors' chapter 11 cases in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Court may enter a final order consistent with Article III of the United States Constitution.

2. The legal authority for the relief sought herein is sections 105(a), 327, 328, and 330 of the Bankruptcy Code, Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**").

BACKGROUND

A. General

3. On October 22, 2018 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue managing their properties and operating their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No committee, trustee, or examiner has been appointed in these chapter 11 cases.

4. Additional information regarding the Debtors' business and the events leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Frank A. Pometti in Support of Debtors' Chapter 11 Petitions and First-Day Motions* [Docket No. 4] (the "**First Day Declaration**").²

B. Ordinary Course Professionals

5. The Debtors customarily retain the services of various attorneys and other professionals in the ordinary course of their business operations (such ordinary course

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

professionals, the “**OCPs**”).³ The OCPs provide services to the Debtors in a variety of discrete matters unrelated to these chapter 11 cases, including, but not limited to, legal services related to contractual and employment matters.

RELIEF REQUESTED

6. The Debtors seek authorization to continue to employ and compensate the OCPs postpetition without each OCP having to file formal retention and fee applications pursuant to sections 327, 328, 329, 330 and 331 of the Bankruptcy Code. The Debtors request that they be permitted to employ the OCPs, effective as of the Petition Date or, in the case of OCPs to be hired after the Petition Date, as of the date that each such OCP commences providing service to the Debtors, on terms substantially similar to those in effect prior to the Petition Date (to the extent such OCP was rendering services prior to the Petition Date), but subject to the terms and procedures described below and set forth in the Proposed Order.

THE PROPOSED OCP PROCEDURES

7. The Debtors request that the Court approve the following procedures for the retention and payment of the Ordinary Course Professionals (the “**OCP Procedures**”):⁴

(a) Each OCP shall file with the Court, and serve upon (collectively, the “**Notice Parties**”): (i) proposed counsel for the Debtors, Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Tara C. Pakrouh, Esq. and Betsy L. Feldman, Esq.); (ii) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”), 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jaclyn Weissgerber, Esq. and Jane M. Leamy, Esq.); (iii) counsel for the DIP Lender, Gibson, Dunn &

³ The Debtors have prepared Exhibit A attached hereto (as may be supplemented in accordance with the OCP Procedures, the “**OCP List**”) based on a review of professionals whose services the Debtors anticipate will be required during these chapter 11 cases. However, the OCP List is not intended to constitute a representation that each party listed thereon will be retained, employed, and paid by the Debtors during the course of these chapter 11 cases. Likewise, there may be additional professionals that will provide services as OCPs, but have not yet been identified by the Debtors, and thus are not included on the attached OCP List. Accordingly, the Debtors reserve the right to supplement or otherwise amend the OCP List from time to time by filing a supplemental or amended OCP List with the Court in accordance with the procedures set forth herein.

⁴ The OCP Procedures will not apply to attorneys or other professionals retained, or to be retained, by the Debtors pursuant to separate orders of the Court.

Crutcher LLP, 200 Park Avenue, New York, New York 10166, (Attn: Michael A. Rosenthal, Esq. and Matthew K. Kelsey, Esq.); and (iv) counsel to any official committee appointed in these chapter 11 cases (a “**Committee**”), a declaration of disinterestedness (the “**Declaration of Disinterestedness**”), substantially in the form attached as Exhibit B hereto, at least fourteen (14) calendar days prior to submitting an invoice to the Debtors.

(b) The Notice Parties shall have fourteen (14) calendar days after service of each OCP’s Declaration of Disinterestedness (the “**Objection Deadline**”) to object to the retention of such OCP. The objecting party shall file such objection with the Court and serve any such objections upon the Notice Parties and the respective OCP on or before the Objection Deadline. If any such objection cannot be resolved within fourteen (14) calendar days of its receipt, the matter shall be scheduled for hearing before the Court at the next regularly scheduled omnibus hearing date in these chapter 11 cases that is not less than seven (7) days after such fourteenth (14th) day or such other date otherwise agreeable to the relevant parties. If no objection is received from any of the Notice Parties by the Objection Deadline with respect to any particular OCP or any objection to the particular OCP has been resolved consensually or by order of the Court, the Debtors shall be authorized on a final basis to retain and employ such OCP, effective as of the Petition Date (or such applicable later date), and to compensate such OCP in accordance with the OCP Procedures.

(c) No OCP shall be paid any fees or expenses until its Declaration of Disinterestedness has been filed with the Court and the Objection Deadline has passed with no objections having been filed or, if an objection is filed on or before the Objection Deadline, the objection has been resolved consensually or by order of the Court.

(d) The Debtors shall be authorized to pay, without formal application to the Court by any OCP, 100% of the postpetition fees and expenses advanced to each of the OCPs retained by the Debtors in accordance with the OCP Procedures upon the submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date, *provided, however*, that postpetition compensation and reimbursement of postpetition expenses paid to an OCP may not exceed \$35,000 per month, on average, over the prior rolling three-month period (the “**OCP Cap**”), *provided, further*, the Debtors reserve their rights to seek to increase the OCP Cap after notice and a hearing.

(e) Any fees and expenses payable to an OCP in excess of the OCP Cap shall be subject to prior approval of the Court in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of the Court authorizing the payment of professionals retained in these chapter 11 cases.

(f) Within thirty (30) days of the close of each calendar quarter (each a “**Quarter**”), beginning with the calendar quarter ending December 31, 2018, the Debtors shall file with the Court, and serve on (a) the U.S. Trustee, (b) counsel to any Committee and (c) counsel to the DIP Lender, a statement identifying the monthly and aggregate amounts paid to each OCP in the reported Quarter.

(g) The Debtors reserve the right to supplement the OCP List, from time to time as necessary, to add or remove OCPs without the need for any further hearing and without the need to file individual retention applications. In the event the Debtors add an OCP, the Debtors propose to file a notice with the Court identifying the supplemental OCPs (a “**Supplemental OCP List**”) and serve it on the Notice Parties. If no objections are filed to any Supplemental OCP List within fourteen (14) days of service thereof, such Supplemental OCP List shall: (i) be deemed approved by the Court without the need for a hearing or further notice or order of the Court; and (ii) be within the purview of the Proposed Order and the OCP Procedures.

8. Although some of the OCPs may have an unsecured claim against the Debtors in respect of prepetition services rendered, the Debtors do not believe that any of the OCPs have an interest materially adverse to the Debtors, their creditors, or other parties in interest. By this Motion, the Debtors are not requesting authority to pay any prepetition amounts owed to OCPs.

BASIS FOR RELIEF

9. As an initial matter, the Debtors represent that: (a) the retention of the Ordinary Course Professionals is necessary for the day-to-day operations of the Debtors’ businesses; (b) expenses for the Ordinary Course Professionals will be monitored; and (c) the Ordinary Course Professionals will not perform substantial services related to the administration of these chapter 11 cases without filing an application with the Court for separate retention as a non-ordinary course professional.

10. Section 327(a) of the Bankruptcy Code requires a debtor to obtain court approval to retain and employ a “professional” to assist the debtor in the conduct of its chapter 11 case. *See* 11 U.S.C. § 327(a). According to the prevailing case law in this District, the

following factors are used to determine whether an entity is a “professional” within the meaning of section 327(a):

- (a) whether the entity controls, manages, administers, invests, purchases or sells assets that are significant to the debtor’s reorganization;
- (b) whether the entity is involved in negotiating the terms of a plan of reorganization;
- (c) whether the entity is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor’s business operations;
- (d) whether the entity is given discretion or autonomy to exercise his or her own professional judgment in some part of the administration of the debtor’s estate;
- (e) the extent of the entity’s involvement in the administration of the debtor’s estate; and
- (f) whether the entity’s services involve some degree of special knowledge or skill, such that it can be considered a “professional” within the ordinary meaning of the term.

See, e.g., In re Am. Tissue, Inc., 331 B.R. 169, 173 (Bankr. D. Del. 2005); *In re First Merchs. Acceptance Corp.*, No. 97-1500, 1997 WL 873551, at *2-3 (Bankr. D. Del. Dec. 15, 1997) (defining “professionals” within the meaning of section 327 as those whose “occupations . . . play a central role in the administration of the debtor proceeding, and not those occupations which are [merely] involved in the day-to-day mechanics of the debtor’s business . . . [but those who are] given discretion or autonomy in some part of administration of the debtor’s estate”); *In re Johns-Manville Corp.*, 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986).

11. These factors must be considered in their totality; none of the factors alone are dispositive. *See First Merchs.*, 1997 WL 873551, at *3. Considering each of these factors, the Debtors do not believe that all of the OCPs are “professionals” within the meaning of section 327 of the Bankruptcy Code. Specifically, none of the OCPs will be involved in the administration of these chapter 11 cases; instead, they provide services in connection with certain

discrete elements of the Debtors' operations. Nevertheless, the Debtors seek the relief requested in this Motion to establish clear mechanisms of retention and payment of the OCPs to avoid any subsequent controversy in relation thereto.

12. The Debtors rely on the assistance of OCPs for essential services that are not bankruptcy-related, and the Debtors wish to continue to employ the OCPs to render services similar to those that were required by the Debtors prior to the commencement of these chapter 11 cases. However, due to the relatively modest amount of fees that the OCPs bill to the Debtors, it would be inefficient and burdensome to the Debtors to request that each OCP apply separately for approval of its employment and compensation. Furthermore, the procedures outlined herein will relieve the Court and U.S. Trustee and other interested parties of the burden of reviewing numerous fee applications involving relatively small amounts of fees and expenses, while providing the protections against abuse as described in the OCP Procedures.

13. In addition, certain OCPs may be unfamiliar with the fee application procedures employed in bankruptcy cases and/or unwilling or unable to assume the administrative and financial burden of such procedures. Consequently, some of the OCPs may be unwilling to work with the Debtors if such procedures are imposed, forcing the Debtors to incur additional and unnecessary expenses to retain new professionals unfamiliar with the Debtors' business and the relevant matters.

14. The Debtors submit that the continued employment and compensation of the OCPs in accordance with the OCP Procedures is in the best interests of the Debtors' estates. The Debtors and their estates would be well served by the continued retention of the OCPs because of the OCPs' understanding of the Debtors' business and the matters on which the OCPs are engaged. Moreover, as part of their chapter 11 efforts, the Debtors are focused on

maintaining their business operations as the Debtors negotiate arrangements to finalize their ongoing projects, with the overarching goal of maximizing estate value. Therefore, it is in the best interests of the Debtors' estates to avoid any disruption that could negatively impact the Debtors' chapter 11 efforts.

15. Accordingly, based on the foregoing, the Debtors respectfully submit that the relief requested herein should be granted

NOTICE

16. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) the Debtors' thirty (30) largest unsecured creditors (excluding insiders); (iii) counsel to the DIP Lender; and (iv) all parties who, as of the filing of this Motion, have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, granting the relief requested herein and such further relief to the Debtors as may be just and proper.

Dated: October 29, 2018
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Justin H. Rucki

M. Blake Cleary (No. 3614)
Sean M. Beach (No. 4070)
Justin H. Rucki (No. 5304)
Tara C. Pakrouh (No. 6192)
Rodney Square
1000 North King Street
Wilmington, DE 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

Proposed Counsel to the Debtors

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

In re:

WELDED CONSTRUCTION, L.P., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 18-12378 (KG)
)
) (Jointly Administered)
)
) **Hearing Date:**
) **November 19, 2018 at 11:00 a.m. (ET)**
)
) **Objection Deadline:**
) **November 13, 2018 at 4:00 p.m. (ET)**

NOTICE OF MOTION

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE; (II) THE DEBTORS' THIRTY (30) LARGEST UNSECURED CREDITORS (EXCLUDING INSIDERS); (III) COUNSEL TO THE DIP LENDER; AND (IV) ALL PARTIES WHO, AS OF THE FILING OF THE MOTION, HAVE REQUESTED NOTICE IN THESE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 2002

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) have filed the attached *Debtors’ Motion for an Order Authorizing the Debtors to Retain, Employ, and Compensate Certain Professionals Utilized in the Ordinary Course of Business, Effective as of the Petition Date* (the “**Motion**”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **November 13, 2018 at 4:00 p.m. (ET)** (the “**Objection Deadline**”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned proposed counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON NOVEMBER 19, 2018 AT 11:00 A.M. (ET) BEFORE THE HONORABLE KEVIN GROSS AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, SIXTH FLOOR, COURTROOM NO. 3, WILMINGTON, DELAWARE 19801.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.

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

Dated: October 29, 2018
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Justin H. Rucki

M. Blake Cleary (No. 3614)

Sean M. Beach (No. 4070)

Justin H. Rucki (No. 5304)

Tara C. Pakrouh (No. 6192)

Rodney Square

1000 North King Street

Wilmington, DE 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

Proposed Counsel to the Debtors

EXHIBIT A

OCP List

<u>OCP</u>	<u>Service Provided</u>
Lewis Brisbois Bisgard & Smith LLP	Legal (contract)
Eckert Seamans Cherin & Mellott, LLC	Legal (OSHA compliance)
Spengler Nathanson P.L.L.	Legal (labor/employment)

EXHIBIT B

Form Declaration of Disinterestedness

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

In re:

WELDED CONSTRUCTION, L.P., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-12378 (KG)

Jointly Administered

**DECLARATION OF DISINTERESTEDNESS BY
PROFESSIONAL USED IN THE ORDINARY COURSE OF BUSINESS**

I, _____, declare under penalty of perjury:

1. I am a [position] of [insert name of sole proprietorship or company], located at [Street, City, State, Zip Code] (the “**Firm**”).

2. This declaration (the “**Declaration**”) is submitted in accordance with the *Order Authorizing the Debtors to Retain, Employ, and Compensate Certain Professionals Utilized in the Ordinary Course of Business, Effective as of the Petition Date* [Docket No. ____] (the “**OCP Order**”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the OCP Order.

3. The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) have requested that the Firm provide [_____] services to the Debtors, and the Firm has agreed to provide such services.

4. The Firm may have performed services in the past, may currently perform services, and may perform services in the future, in matters unrelated to the above-captioned cases, for persons that are parties in interest in the Debtors’ chapter 11 cases. The Firm does not perform services for any such person in connection with these chapter 11 cases, or have any

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.

relationship with any such person, their attorneys, or accountants that would be adverse to the Debtors or their estates.

5. The Firm [has/has not] provided services to the Debtors prior to the commencement of these chapter 11 cases.

6. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties in interest in these chapter 11 cases.

7. Neither I, nor any principal, partner, director, or officer of, nor any professional employed by, the Firm: (a) has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Firm; (b) insofar as I have been able to ascertain, holds, or represents, any interest adverse to the Debtors or their estates with respect to the matter(s) upon which this Firm is to be employed; and (c) insofar as I have been able to ascertain, is a relative of the United States Bankruptcy Judge assigned to these chapter 11 cases, and the Firm does not have a connection with the United States Bankruptcy Judge that would render the Firm's retention in these chapter 11 cases improper. Further, the Firm does not have any connection with U.S. Trustee or any persons employed by the U.S. Trustee.

8. The Debtors owe the Firm [\$_____] for prepetition services, the payment of which is subject to limitations contained in the Bankruptcy Code. [FOR NON-LEGAL FIRMS: The Firm has waived or will waive any prepetition claim against the Debtors' estates.]

9. As of the Petition Date, the Firm [was/was not] party to an agreement for indemnification with certain of the Debtors. [IF THERE IS AN AGREEMENT: Such

agreement is attached hereto as Exhibit 1 (the “**Agreement**”). I have reviewed the OCP Order and understand that the indemnification provisions set forth in the Agreement are subject, during the pendency of the Debtors’ chapter 11 cases, to the modifications set forth in paragraph 4 the OCP Order.]

10. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on [____], 2018

By: _____
[DECLARANT]

EXHIBIT C

Proposed Order

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

In re:

WELDED CONSTRUCTION, L.P., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-12378 (KG)

Jointly Administered

Ref. Docket No. _____

**ORDER AUTHORIZING THE DEBTORS TO RETAIN, EMPLOY, AND
COMPENSATE CERTAIN PROFESSIONALS UTILIZED IN THE ORDINARY
COURSE OF BUSINESS, EFFECTIVE AS OF THE PETITION DATE**

Upon consideration of the motion (the “**Motion**”)² of the Debtors for entry of an order authorizing the Debtors to retain, employ, and compensate certain professionals utilized in the ordinary course of business, effective as of the Petition Date; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and this Court may enter a final order consistent with Article III of the United States Constitution; and proper and adequate notice of the Motion and the hearing thereon having been given; and it appearing that no other or further notice being necessary; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor; it is hereby

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.

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

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, in their discretion, to retain, employ, and compensate the OCPs on the OCP List, for their postpetition fees and actual and necessary expenses, in the ordinary course of business, in accordance with the terms of this Order.
3. The following procedures shall govern the retention and compensation of the OCPs (the “**OCP Procedures**”):

(a) Each OCP shall file with this Court, and serve upon (collectively, the “**Notice Parties**”): (i) proposed counsel for the Debtors, Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Tara C. Pakrouh, Esq. and Betsy L. Feldman, Esq.); (ii) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”), 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jaclyn Weissgerber, Esq. and Jane M. Leamy, Esq.); (iii) counsel for the DIP Lender, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, (Attn: Michael A. Rosenthal, Esq. and Matthew K. Kelsey, Esq.); and (iv) counsel to any Committee, a declaration of disinterestedness (the “**Declaration of Disinterestedness**”), substantially in the form attached as Exhibit B to the Motion, at least fourteen (14) calendar days prior to submitting an invoice to the Debtors.

(b) The Notice Parties shall have fourteen (14) calendar days after service of each OCP’s Declaration of Disinterestedness (the “**Objection Deadline**”) to object to the retention of such OCP. The objecting party shall file such objection with this Court and serve any such objections upon the Notice Parties and the respective OCP on or before the Objection Deadline. If any such objection cannot be resolved within fourteen (14) calendar days of its receipt, the matter shall be scheduled for hearing before this Court at the next regularly scheduled omnibus hearing date in these chapter 11 cases that is not less than seven (7) days after such fourteenth (14th) day or such other date otherwise agreeable to the relevant parties. If no objection is received from any of the Notice Parties by the Objection Deadline with respect to any particular OCP or any objection to the particular OCP has been resolved consensually or by order of this Court, the Debtors shall be authorized on a final basis to retain and employ such OCP, effective as of the Petition Date (or such applicable later date), and to compensate such OCP in accordance with the OCP Procedures.

(c) No OCP shall be paid any fees or expenses until its Declaration of Disinterestedness has been filed with this Court and the Objection Deadline has passed with no objections having been filed or, if an objection is filed on or before the Objection Deadline, the objection has been resolved consensually or by order of this Court.

(d) The Debtors shall be authorized to pay, without formal application to this Court by any OCP, 100% of the postpetition fees and expenses advanced to each of the OCPs retained by the Debtors in accordance with the OCP Procedures upon the submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date, *provided, however*, that postpetition compensation and reimbursement of postpetition expenses paid to an OCP may not exceed \$35,000 per month, on average, over the prior rolling three-month period (the “**OCP Cap**”), *provided, further*, the Debtors reserve their rights to seek to increase the OCP Cap after notice and a hearing.

(e) Any fees and expenses payable to an OCP in excess of the OCP Cap shall be subject to prior approval of this Court in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of this Court authorizing the payment of professionals retained in these chapter 11 cases.

(f) Within thirty (30) days of the close of each calendar quarter (each a “**Quarter**”), beginning with the calendar quarter ending December 31, 2018, the Debtors shall file with this Court, and serve on (a) the U.S. Trustee, (b) counsel to any Committee and (c) counsel to the DIP Lender, a statement identifying the monthly and aggregate amounts paid to each OCP in the reported Quarter.

(g) The Debtors reserve the right to supplement the OCP List, from time to time as necessary, to add or remove OCPs without the need for any further hearing and without the need to file individual retention applications. In the event the Debtors add an OCP, the Debtors propose to file a notice with this Court identifying the supplemental OCPs (a “**Supplemental OCP List**”) and serve it on the Notice Parties. If no objections are filed to any Supplemental OCP List within fourteen (14) days of service thereof, such Supplemental OCP List shall: (i) be deemed approved by this Court without the need for a hearing or further notice or order of this Court; and (ii) be within the purview of this Order and the OCP Procedures.

4. To the extent that any agreement between the Debtors and an OCP provides for the indemnification by the Debtors of such OCP in connection with the services for which the OCP is retained (each such agreement, an “**OCP Agreement**”), the OCP shall attach the OCP Agreement to the Declaration of Disinterestedness and, upon the retention of the OCP

in accordance with the OCP Procedures, the indemnification provisions set forth in the OCP Agreement are approved, subject to the following modifications during the pendency of these chapter 11 cases:

(a) The OCP shall not be entitled to indemnification, contribution, or reimbursement for services provided under the OCP Agreement other than those described in such OCP Agreement, unless such services and indemnification therefor are approved by this Court.

(b) Notwithstanding anything to the contrary in the OCP Agreement, the Debtors shall have no obligation to indemnify the OCP, or provide contribution or reimbursement to the OCP, for any claim or expense related to such OCP Agreement that is: (i) judicially determined (the determination having become final) to have arisen from the OCP's fraud, gross negligence, willful misconduct, bad faith or self-dealing; (ii) for a contractual dispute in which the Debtors allege the breach of the OCP's contractual obligations under the OCP Agreement unless this Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (c) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by this Court, after notice and a hearing to be a claim or expense for which the OCP should not receive indemnity, contribution, or reimbursement under the terms of the OCP Agreement as modified by this Order.

(c) If, before the earlier of (i) entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these chapter 11 cases, the OCP 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 OCP Agreement, including, without limitation, the advancement of defense costs, the OCP must file an application therefor in this Court, and the Debtors may not pay any such amounts to the OCP before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and expenses by the OCP for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify, or make contributions or reimbursements to, the OCP. All parties in interest in these chapter 11 cases shall retain the right to object to any demand by the OCP for indemnification, contribution, or reimbursement.

5. The OCP Procedures will not apply to attorneys or other professionals retained, or to be retained, by the Debtors pursuant to separate orders of this Court.

6. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

7. This Court shall retain jurisdiction with respect to any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: _____, 2018
Wilmington, Delaware

Kevin Gross
United States Bankruptcy Judge