

Hearing Date And Time: April 26, 2017 at 2:00 p.m. (Eastern Time)

Objection Deadline: April 19, 2017 at 4:00 p.m. (Eastern Time)

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*Proposed Attorneys for Debtors  
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re</b>	:	<b>Chapter 11</b>
	:	
<b>WESTINGHOUSE ELECTRIC COMPANY</b>	:	<b>Case No. 17-10751 (MEW)</b>
<b>LLC, et al.,</b>	:	
	:	
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>(Jointly Administered)</b>
	:	
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**NOTICE OF HEARING AND  
MOTION OF DEBTORS FOR ENTRY OF ORDER  
ESTABLISHING AND IMPLEMENTING EXCLUSIVE AND  
GLOBAL PROCEDURES FOR TREATMENT OF RECLAMATION CLAIMS**

PLEASE TAKE NOTICE that a hearing on the annexed *Motion of Debtors*

*Pursuant to 11 U.S.C. §§ 105 and 546(c) Establishing and Implementing Exclusive and Global*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if any, are: Westinghouse Electric Company LLC (0933), CE Nuclear Power International, Inc. (8833), Fauske and Associates LLC (8538), Field Services, LLC (2550), Nuclear Technology Solutions LLC (1921), PaR Nuclear Holding Co., Inc. (7944), PaR Nuclear, Inc. (6586), PCI Energy Services LLC (9100), Shaw Global Services, LLC (0436), Shaw Nuclear Services, Inc. (6250), Stone & Webster Asia Inc. (1348), Stone & Webster Construction Inc. (1673), Stone & Webster International Inc. (1586), Stone & Webster Services LLC (5448), Toshiba Nuclear Energy Holdings (UK) Limited (N/A), TSB Nuclear Energy Services Inc. (2348), WEC Carolina Energy Solutions, Inc. (8735), WEC Carolina Energy Solutions, LLC (2002), WEC Engineering Services Inc. (6759), WEC Equipment & Machining Solutions, LLC (3135), WEC Specialty LLC (N/A), WEC Welding and Machining, LLC (8771), WECTEC Contractors Inc. (4168), WECTEC Global Project Services Inc. (8572), WECTEC LLC (6222), WECTEC Staffing Services LLC (4135), Westinghouse Energy Systems LLC (0328), Westinghouse Industry Products International Company LLC (3909), Westinghouse International Technology LLC (N/A), and Westinghouse Technology Licensing Company LLC (5961). The Debtors' principal offices are located at 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.



*Procedures for Treatment of Reclamation Claims*, dated April 7, 2017 (the “**Motion**”), of Westinghouse Electric Company LLC and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively the “**Debtors**”), seeking authority to (i) establish exclusive procedures for the treatment of all unpaid claims seeking reclamation of goods pursuant to section 546(c) of the Bankruptcy Code that may be asserted against the Debtors, and (ii) prohibit any seller from taking any other remedial action with respect to its goods sold to the Debtors, including any effort to reclaim the same, all as more fully set forth in the Motion, will be held before the Honorable Michael E. Wiles, United States Bankruptcy Judge, in Room 617 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004 (the “**Bankruptcy Court**”), on **April 26, 2017 at 2:00 p.m. (prevailing Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections (the “**Objections**”) to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules, and shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)), and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 and the *Order Pursuant to 11 U.S.C. §105(a) and Fed. R. Bankr. P. 1015(c), 2002(m), and 9007 Implementing Certain Notice and Case Management Procedures* [ECF No. 101] so as to be received no later than **April 19, 2017 at 4:00 p.m. (Eastern Time)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard.

Dated: April 7, 2017  
New York, New York

/s/ Robert J. Lemons

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re</b>	:
	:
	:
<b>WESTINGHOUSE ELECTRIC</b>	:
<b>COMPANY LLC, et al.,</b>	:
	:
<b>Debtors.<sup>1</sup></b>	:
-----X	

**Chapter 11**

**Case No. 17-10751 (MEW)**

**(Jointly Administered)**

**MOTION OF DEBTORS FOR ENTRY OF ORDER PURSUANT  
TO 11 U.S.C. §§ 105 AND 546(c) ESTABLISHING  
AND IMPLEMENTING EXCLUSIVE AND GLOBAL  
PROCEDURES FOR TREATMENT OF RECLAMATION CLAIMS**

TO THE HONORABLE MICHAEL E. WILES,  
UNITED STATES BANKRUPTCY JUDGE:

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if any, are: Westinghouse Electric Company LLC (0933), CE Nuclear Power International, Inc. (8833), Fauske and Associates LLC (8538), Field Services, LLC (2550), Nuclear Technology Solutions LLC (1921), PaR Nuclear Holding Co., Inc. (7944), PaR Nuclear, Inc. (6586), PCI Energy Services LLC (9100), Shaw Global Services, LLC (0436), Shaw Nuclear Services, Inc. (6250), Stone & Webster Asia Inc. (1348), Stone & Webster Construction Inc. (1673), Stone & Webster International Inc. (1586), Stone & Webster Services LLC (5448), Toshiba Nuclear Energy Holdings (UK) Limited (N/A), TSB Nuclear Energy Services Inc. (2348), WEC Carolina Energy Solutions, Inc. (8735), WEC Carolina Energy Solutions, LLC (2002), WEC Engineering Services Inc. (6759), WEC Equipment & Machining Solutions, LLC (3135), WEC Specialty LLC (N/A), WEC Welding and Machining, LLC (8771), WECTEC Contractors Inc. (4168), WECTEC Global Project Services Inc. (8572), WECTEC LLC (6222), WECTEC Staffing Services LLC (4135), Westinghouse Energy Systems LLC (0328), Westinghouse Industry Products International Company LLC (3909), Westinghouse International Technology LLC (N/A), and Westinghouse Technology Licensing Company LLC (5961). The Debtors’ principal offices are located at 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.

Westinghouse Electric Company LLC and certain debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (the “**Motion**”):

**Background**

1. On March 29, 2017 (the “**Petition Date**”), each Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

2. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

3. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Lisa J. Donahue Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York*, sworn to and filed on the Petition Date (the “**Donahue Declaration**”) [ECF No. 4].

**Jurisdiction**

4. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Relief Requested**

5. By this Motion, pursuant to sections 105(a) and 546(c) of the Bankruptcy Code, the Debtors seek entry of an order (i) establishing exclusive procedures (the “**Reclamation Procedures**”) for the treatment of all unpaid claims seeking reclamation of goods pursuant to section 546(c) of the Bankruptcy Code (the “**Reclamation Claims**”) that may be asserted against the Debtors, and (ii) prohibiting any Seller (as hereinafter defined) from taking any other remedial action with respect to its Goods (as hereinafter defined), including any effort to reclaim the same.

6. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A** (the “**Proposed Order**”).

### **Need for Relief**

7. As a result of the commencement of this chapter 11 case, the Debtors have received and expect to continue to receive Reclamation Claims from various parties (collectively, the “**Sellers**”) who, in the ordinary course of business, sold and delivered goods to the Debtors (the “**Goods**”), but for which the Debtors have not yet been invoiced or made payment to the Seller in full.<sup>2</sup>

8. The Debtors operate a global business that requires daily purchases of Goods, including Goods provided by various vendors in the days and weeks leading up to the Petition Date. To avoid potentially extensive piecemeal litigation that would interfere with the

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<sup>2</sup> Certain Sellers may receive payment on account of their prepetition claims pursuant to the *Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a), 363(b), and 50(b)(9) for Interim and Final Authorization to (I) Pay Prepetition Obligations to Critical Vendors, Shippers, Warehousemen, and other Lien Claimants, and Foreign Creditors, (II) Confirming Administrative Status for Certain Goods Delivered and Services Provided Postpetition, and (III) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers* [ECF No. 8]. To the extent a Seller receives payment on account of its prepetition claim pursuant to an order approving such motion, the Reclamation Procedures shall not apply to such Seller.

orderly administration of this case, the Debtors seek to establish the Reclamation Procedures for the reconciliation and allowance of Reclamation Claims. The Debtors submit that the Reclamation Procedures will effectively and efficiently streamline the process of resolving any potential Reclamation Claims for the benefit of the Debtors and all other parties in interest.

**Proposed Reclamation Procedures**

9. The Debtors propose the following procedures (the “**Reclamation Procedures**”) for processing and reconciling Reclamation Claims:

- (a) any Seller asserting a Reclamation Claim must satisfy all procedural and timing requirements entitling it to have a right to reclamation under section 546(c) of the Bankruptcy Code;
- (b) any Seller asserting a Reclamation Claim must submit a written demand asserting such Reclamation Claim (a “**Reclamation Demand**”), which must include, to the extent such information is already available or known to such Seller, (i) a description of the Goods subject to the Reclamation Demand; (ii) copies of any purchasing orders, invoices, receipts, bills of lading and the like, identifying the particular Goods for which the Reclamation Demand is being asserted; (iii) any evidence regarding the date(s) such Goods were shipped to and received by the Debtors and the alleged value of such Goods; and (iv) a statement indicating whether the Seller has filed or intends to file any other claim against the Debtors regarding the Goods underlying its Reclamation Demand (collectively, the “**Reclamation Demand Requirements**”);
- (c) to the extent that any Seller asserted a reclamation demand, prior to entry of the order granting the relief requested herein, that complied with the procedures and timing requirements of section 546(c) of the Bankruptcy Code, but otherwise did not meet the Reclamation Demand Requirements, such Seller shall have 20 days from the date of entry of the Proposed Order to submit to the Debtors the supplemental information or evidence required to meet the Reclamation Demand Requirements;
- (d) unless a Seller already submitted a Reclamation Demand to the Debtors within 45 days prior to the Petition Date, any Seller asserting a Reclamation Claim must have submitted a Reclamation

Demand (subject to the Seller's right to supplement the Reclamation Demand as provided above to meet the Reclamation Demand Requirements) so that it was received on or before twenty (20) calendar days after the Petition Date (the "**Reclamation Deadline**") by the Debtors;

- (e) upon entry of an order granting this Motion, the Debtors will serve upon all Sellers who have submitted a Reclamation Demand by the Reclamation Deadline a copy of such order at the address indicated in its Reclamation Demand;
- (f) no later than 120 days after entry of the order granting this Motion (the "**Reclamation Notice Deadline**"), the Debtors will file with the Court a notice (the "**Reclamation Notice**"), listing the timely submitted Reclamation Claims and the amount (if any) and proposed status and treatment of each such Reclamation Claim that the Debtors determine to be valid. The Debtors will serve the Reclamation Notice on (i) the Rule 2002 Parties set forth in the *Order Pursuant to 11 U.S.C. §105(a) and Fed. R. Bankr. P. 1015(c), 2002(m), and 9007 Implementing Certain Notice and Case Management Procedures* [ECF No. 101] and (ii) each Seller listed in the Reclamation Notice, at the address indicated in the respective Seller's Reclamation Demand (collectively, the "**Notice Parties**");
- (g) if the Debtors fail to file the Reclamation Notice by the Reclamation Notice Deadline, any holder of a Reclamation Claim that submitted a timely Reclamation Demand in accordance with the Reclamation Procedures may bring a motion on its own behalf to seek relief with respect to its Reclamation Claim;
- (h) any party that wishes to object to the Reclamation Notice must file and serve an objection (a "**Reclamation Notice Objection**") on the Notice Parties, so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on the 20th day after the date on which the Reclamation Notice is filed (the "**Objection Deadline**"). Any Reclamation Notice Objection must include (i) a copy of the Reclamation Demand, with evidence of the date mailed to the Debtor; and (ii) a statement describing with specificity the objections to the Reclamation Notice and any legal and factual bases for such objections;
- (i) any Reclamation Claim listed in the Reclamation Notice for which no Reclamation Notice Objection is filed and served by the Objection Deadline shall be deemed allowed by the Court in the



amount identified by the Debtors in the Reclamation Notice, provided that all issues relating to the treatment of any such allowed Reclamation Claim shall be reserved;

- (j) notwithstanding and without limiting the foregoing, the Debtors will be authorized, but not required, to negotiate, with any Seller to seek an agreement resolving the Seller's Reclamation Claim. If the Debtors and a Seller agree on the validity, amount, or treatment of the Seller's Reclamation Claim, the Debtors will file with the Court a notice of settlement (a "**Settlement Notice**") and serve such Settlement Notice on the Notice Parties. Each Notice Party will have 10 days from the date of service of such Settlement Notice to file with the Court and serve on the other Notice Parties and attorneys for the Debtors an objection thereto (a "**Settlement Objection**");
- (k) if no Settlement Objection with respect to a Reclamation Claim that is the subject of a Settlement Notice is timely filed and served, such Reclamation Claim will be treated in accordance with the Settlement Notice without further order of the Court;
- (l) if a Settlement Objection with respect to a Reclamation Claim that is the subject of a Settlement Notice is timely filed and served, the parties may negotiate a consensual resolution of such objection to be incorporated in a stipulation filed with the Court (a "**Settlement Stipulation**"). Upon the filing of a Settlement Stipulation, the applicable Reclamation Claim shall be allowed and treated in accordance with the terms of the Settlement Stipulation without further order of the Court;
- (m) if no consensual resolution of a Settlement Objection with respect to a Reclamation Claim that is the subject of a Settlement Notice is reached, the Debtors may file a motion with the Court requesting a hearing with respect to the Settlement Notice;
- (n) all Sellers shall be forever barred, without further order of the Court, from asserting a Reclamation Demand after the expiration of the Reclamation Deadline, but shall not be barred from asserting, subject to applicable deadlines, related or unrelated general unsecured claims or administrative expense status pursuant to section 503(b)(9) of the Bankruptcy Code.

10. The Debtors propose that, except to the extent a Seller has received payment on account of its prepetition claim pursuant to another order of the Court, the

Reclamation Procedures shall be the sole and exclusive method for addressing and resolving Reclamation Claims. As a result, the Debtors request that all Sellers be prohibited from seeking any other means for the resolution or treatment of their Reclamation Claims, including, without limitation, the following: (a) commencing adversary proceedings or contested matters in connection with any Reclamation Claim, (b) seeking to obtain possession of any Goods except as may be permitted by the Reclamation Procedures, or (c) interfering with the delivery of any Goods to the Debtors or the retention of any Goods by the Debtor. The Reclamation Procedures will effectively and efficiently streamline the process of resolving the Reclamation Claims for the Debtors and the Sellers alike, without impacting the parties' substantive rights to pursue or contest the Reclamation Claims.

**Basis for Relief Requested**

11. Upon the commencement of a chapter 11 case, reclamation rights are governed by section 546(c) of the Bankruptcy Code, which provides, in relevant part:

[S]ubject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the [debtor in possession] are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such a seller may not reclaim such goods unless such seller demands in writing reclamation of such goods –

(A) not later than 45 days after the date of receipt of such goods by the debtor; or

(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

11 U.S.C. § 546(c)(1).<sup>3</sup>

12. In addition, pursuant to Bankruptcy Rule 9019(a), after notice and a hearing, the Court may approve a compromise or settlement between the Debtors and any Seller who files a Reclamation Demand and/or Reclamation Notice Objection. Fed. R. Bankr. P. 9019(a). The ability to negotiate with the Seller will expedite the resolution of Reclamation Claims and promote the economic administration of this chapter 11 case.

13. Furthermore, section 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). The Debtors submits that establishing and implementing the Reclamation Procedures is necessary and appropriate and that the Reclamation Procedures are consistent with section 546(c) of the Bankruptcy Code and Bankruptcy Rule 9019.

14. The Debtors believe that the Reclamation Procedures and their ability to resolve Reclamation Claims in accordance with the Reclamation Procedures will assist in the consensual resolution of such claims in an economic and efficient manner. Moreover, the Reclamation Procedures will minimize costly and distracting litigation, particularly at the early stages of this case, and enable the Debtors to focus their resources and energies on maximizing value for the benefit of their stakeholders. Therefore, the relief requested in this Motion is in the best interests of the Debtors and their estates and should be granted in all respects.

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<sup>3</sup> Any Seller that fails to provide notice in the manner described in section 546(c) may still assert administrative expense status pursuant to section 503(b)(9) of the Bankruptcy Code for goods delivered to the Debtors within 20 days before the Petition Date in the ordinary course of the Debtor’s business. See 11 U.S.C. §§ 503(b)(9); 546(c)(2).

**Notice**

15. Notice of this Motion will be provided in accordance with the *Order Pursuant to 11 U.S.C. §105(a) and Fed. R. Bankr. P. 1015(c), 2002(m), and 9007 Implementing Certain Notice and Case Management Procedures* [ECF No. 101] and to the Notice Parties. The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

16. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: New York, New York  
April 7, 2017

*/s/ Robert J. Lemons*

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*Proposed Attorneys for Debtors  
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re</b>	:
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	: <b>Chapter 11</b>
<b>WESTINGHOUSE ELECTRIC</b>	:
<b>COMPANY LLC, <i>et al.</i>,</b>	:
	: <b>Case No. 17-10751 (MEW)</b>
	:
<b>Debtors.<sup>1</sup></b>	: <b>(Jointly Administered)</b>
-----X	

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 546(c)  
ESTABLISHING AND IMPLEMENTING EXCLUSIVE AND GLOBAL  
PROCEDURES FOR TREATMENT OF RECLAMATION CLAIMS**

Upon the Motion, dated April 7, 2017 (the “**Motion**”),<sup>2</sup> of Westinghouse Electric Company LLC and certain debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), pursuant to sections 105(a) and 546(c) of title 11, United States Code (the “**Bankruptcy Code**”), for entry of an order authorizing the Debtors to establish and implement procedures to address and reconcile Reclamation Claims, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 the Amended

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if any, are: Westinghouse Electric Company LLC (0933), CE Nuclear Power International, Inc. (8833), Fauske and Associates LLC (8538), Field Services, LLC (2550), Nuclear Technology Solutions LLC (1921), PaR Nuclear Holding Co., Inc. (7944), PaR Nuclear, Inc. (6586), PCI Energy Services LLC (9100), Shaw Global Services, LLC (0436), Shaw Nuclear Services, Inc. (6250), Stone & Webster Asia Inc. (1348), Stone & Webster Construction Inc. (1673), Stone & Webster International Inc. (1586), Stone & Webster Services LLC (5448), Toshiba Nuclear Energy Holdings (UK) Limited (N/A), TSB Nuclear Energy Services Inc. (2348), WEC Carolina Energy Solutions, Inc. (8735), WEC Carolina Energy Solutions, LLC (2002), WEC Engineering Services Inc. (6759), WEC Equipment & Machining Solutions, LLC (3135), WEC Specialty LLC (N/A), WEC Welding and Machining, LLC (8771), WECTEC Contractors Inc. (4168), WECTEC Global Project Services Inc. (8572), WECTEC LLC (6222), WECTEC Staffing Services LLC (4135), Westinghouse Energy Systems LLC (0328), Westinghouse Industry Products International Company LLC (3909), Westinghouse International Technology LLC (N/A), and Westinghouse Technology Licensing Company LLC (5961). The Debtors’ principal offices are located at 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.

<sup>2</sup> Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion basis (the “**Hearing**”); and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest, and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as provided herein.
2. The following reclamation procedures (the “**Reclamation Procedures**”),

which are hereby approved and authorized in their entirety, shall apply to all Reclamation Claims:

- (a) any Seller asserting a Reclamation Claim must satisfy all procedural and timing requirements entitling it to have a right to reclamation under section 546(c) of the Bankruptcy Code;
- (b) any Seller asserting a Reclamation Claim must submit a written demand asserting such Reclamation Claim (a “**Reclamation Demand**”), which must include, to the extent such information is already available or known to such Seller, (i) a description of the Goods subject to the Reclamation Demand; (ii) copies of any purchasing orders, invoices, receipts, bills of lading and the like, identifying the particular Goods for which the Reclamation

Demand is being asserted; (iii) any evidence regarding the date(s) such Goods were shipped to and received by the Debtors and the alleged value of such Goods; and (iv) a statement indicating whether the Seller has filed or intends to file any other claim against the Debtors regarding the Goods underlying its Reclamation Demand (collectively, the “**Reclamation Demand Requirements**”);

- (c) to the extent that any Seller asserted a reclamation demand, prior to entry of this Order granting the relief requested herein, that complied with the procedures and timing requirements of section 546(c) of the Bankruptcy Code, but otherwise did not meet the Reclamation Demand Requirements, such Seller shall have 20 days from the date of entry of this Order to submit to the Debtors the supplemental information or evidence required to meet the Reclamation Demand Requirements;
- (d) unless a Seller already submitted a Reclamation Demand to the Debtors within 45 days prior to the Petition Date, any Seller asserting a Reclamation Claim must have submitted a Reclamation Demand (subject to the Seller’s right to supplement the Reclamation Demand as provided above to meet the Reclamation Demand Requirements) so that it was received on or before twenty (20) calendar days after the Petition Date (the “**Reclamation Deadline**”) by the Debtors;
- (e) upon entry of this Order, the Debtors will serve upon all Sellers who have submitted a Reclamation Demand by the Reclamation Deadline a copy of this Order at the address indicated in its Reclamation Demand;
- (f) no later than 120 days after entry of this Order (the “**Reclamation Notice Deadline**”), the Debtors will file with the Court a notice (the “**Reclamation Notice**”), listing the timely submitted Reclamation Claims and the amount (if any) and proposed status and treatment of each such Reclamation Claim that the Debtors determine to be valid. The Debtors will serve the Reclamation Notice on (i) the Rule 2002 Parties set forth in the *Order Pursuant to 11 U.S.C. §105(a) and Fed. R. Bankr. P. 1015(c), 2002(m), and 9007 Implementing Certain Notice and Case Management Procedures* [ECF No. 101] and (ii) each Seller listed in the Reclamation Notice, at the address indicated in the respective Seller’s Reclamation Demand (collectively, the “**Notice Parties**”);

- (g) if the Debtors fail to file the Reclamation Notice by the Reclamation Notice Deadline, any holder of a Reclamation Claim that submitted a timely Reclamation Demand in accordance with the Reclamation Procedures may bring a motion on its own behalf to seek relief with respect to its Reclamation Claim;
- (h) any party that wishes to object to the Reclamation Notice must file and serve an objection (a “**Reclamation Notice Objection**”) on the Notice Parties, so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on the 20th day after the date on which the Reclamation Notice is filed (the “**Objection Deadline**”). Any Reclamation Notice Objection must include (i) a copy of the Reclamation Demand, with evidence of the date mailed to the Debtor; and (ii) a statement describing with specificity the objections to the Reclamation Notice and any legal and factual bases for such objections;
- (i) any Reclamation Claim listed in the Reclamation Notice for which no Reclamation Notice Objection is filed and served by the Objection Deadline shall be deemed allowed by the Court in the amount identified by the Debtors in the Reclamation Notice, provided that all issues relating to the treatment of any such allowed Reclamation Claim shall be reserved;
- (j) notwithstanding and without limiting the foregoing, the Debtors will be authorized, but not required, to negotiate, with any Seller to seek an agreement resolving the Seller’s Reclamation Claim. If the Debtors and a Seller agree on the validity, amount, or treatment of the Seller’s Reclamation Claim, the Debtors will file with the Court a notice of settlement (a “**Settlement Notice**”) and serve such Settlement Notice on the Notice Parties. Each Notice Party will have 10 days from the date of service of such Settlement Notice to file with the Court and serve on the other Notice Parties and attorneys for the Debtors an objection thereto (a “**Settlement Objection**”);
- (k) if no Settlement Objection with respect to a Reclamation Claim that is the subject of a Settlement Notice is timely filed and served, such Reclamation Claim will be treated in accordance with the Settlement Notice without further order of the Court;
- (l) if a Settlement Objection with respect to a Reclamation Claim that is the subject of a Settlement Notice is timely filed and served, the parties may negotiate a consensual resolution of such objection to be incorporated in a stipulation filed with the Court



(a “**Settlement Stipulation**”). Upon the filing of a Settlement Stipulation, the applicable Reclamation Claim shall be allowed and treated in accordance with the terms of the Settlement Stipulation without further order of the Court;

(m) if no consensual resolution of a Settlement Objection with respect to a Reclamation Claim that is the subject of a Settlement Notice is reached, the Debtors may file a motion with the Court requesting a hearing with respect to the Settlement Notice;

(n) all Sellers shall be forever barred, without further order of the Court, from asserting a Reclamation Demand after the expiration of the Reclamation Deadline, but shall not be barred from asserting, subject to applicable deadlines, related or unrelated general unsecured claims or administrative expense status pursuant to section 503(b)(9) of the Bankruptcy Code.

3. The foregoing Reclamation Procedures are the sole and exclusive method for addressing and resolving unpaid Reclamation Claims asserted against the Debtors.

4. All Sellers are prohibited from seeking any other means for the resolution or treatment of their Reclamation Claims, including without limitation: (a) commencing adversary proceedings and contested matters in connection with any Reclamation Claims, (b) seeking to obtain possession of any Goods except as may be permitted by the Reclamation Procedures, and (c) interfering with the delivery of any Goods to the Debtors or the retention of any Goods by the Debtor; *provided, however*, that nothing in this Order shall bar a Seller from asserting a claim pursuant to section 503(b)(9) of the Bankruptcy Code by the applicable deadline.

5. Any adversary proceedings or contested matters related to Reclamation Claims, whether currently pending or initiated in the future, except those proceedings initiated by the Debtors in accordance with the Reclamation Procedures, are stayed and the claims asserted therein shall be resolved exclusively pursuant to the Reclamation Procedures.

6. To the extent a Reclamation Claim has been paid by the Debtors pursuant to another order entered by the Court in this chapter 11 case, the Reclamation Procedures shall not apply to such Seller and any Reclamation Claim filed by such Seller with the Court shall be deemed withdrawn without the need for any further order of the Court.

7. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York  
[\_\_\_\_\_], 2017

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United States Bankruptcy Judge