



Application; and upon the Dietz Declaration<sup>2</sup> in support of the Application; and the Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Application and the opportunity for a hearing on the Application was appropriate under the particular circumstances; and the Court having reviewed the Application and having considered the statements in support of the relief requested therein at a hearing before the Court (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED:**

1. The Application is granted as set forth below.
2. In accordance with sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rule 2014-1, the Debtors are authorized to employ and retain PJS *nunc pro tunc* to the Petition Date as their investment banker and financial advisor on the terms set forth in the Application as modified by this Order.
3. PJS shall be compensated in accordance with the procedures set forth in the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and such procedures as may be fixed by order of this Court; *provided, however*, that PJS shall be granted a limited waiver of the

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<sup>2</sup> Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Application.

information requirements set forth in Local Rule 2016-2 to keep time records in half-hour increments.

4. Notwithstanding the prior paragraph, the fees payable to PJS pursuant to the Engagement Letter shall be subject to review pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standards set forth in section 330 of the Bankruptcy Code, except that the U.S. Trustee shall retain the right to object to any Restructuring Transaction Fee, Financing Transaction Fee or Sale Transaction Fee (each as defined in the Engagement Letter) payable under the Engagement Letter based on the reasonableness standard provided for in section 330 of the Bankruptcy Code. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee, on appeal or otherwise, with respect to the reasonableness of any Restructuring Transaction Fee, Financing Transaction Fee or Sale Transaction Fee (each as defined in the Engagement Letter).

5. The indemnification provisions of the Engagement Letter are approved, subject to the following clarifications:

- (a) Subject to the provisions of subparagraphs (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, PJS, in accordance with the Engagement Letter and to the extent permitted by applicable law, for any claim arising from, related to, or in connection with PJS's performance of the services described in the Engagement Letter;
- (b) PJS shall not be entitled to indemnification, contribution, or reimbursement for services provided under the Engagement Letter, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court;
- (c) Notwithstanding anything to the contrary in the Engagement Letter, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense to the extent that it is (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from that

person's gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege the breach of PJS's contractual obligations unless the 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 (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Letter as modified by this Order; and

- (d) If, before the earlier of (i) the 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 the Chapter 11 Cases, PJS believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, or reimbursement obligations under the Engagement Letter, including without limitation the advancement of defense costs, PJS must file an application before this Court, and the Debtors may not pay any such amounts to PJS before the entry of an order by this Court approving the payment. This subparagraph (d) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for payment by PJS for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify PJS.

6. Notwithstanding any terms of the Engagement Letter to the contrary, paragraph 5 of Exhibit A annexed to the Engagement Letter shall be struck in its entirety.

7. Notwithstanding any terms of the Engagement Letter to the contrary, during the pendency of these chapter 11 cases, the limitation of liability provision (i.e., "in no event shall the amount, if any, to be contributed by all Indemnified Parties exceed the amount of the fees actually received by PJSC hereunder") found in paragraph 4 of Exhibit A annexed to the Engagement Letter shall be struck in its entirety.

8. Notwithstanding any terms of the Engagement Letter to the contrary, the Court shall have jurisdiction over any controversy arising from or related to the Application, the Engagement Letter, or PJS's retention in the Chapter 11 Cases.

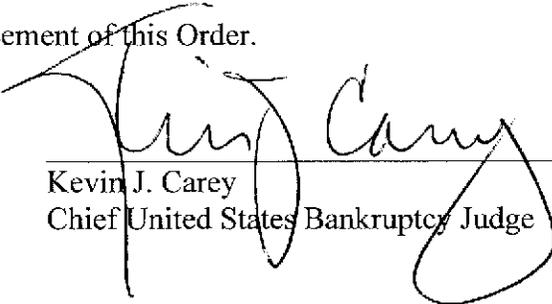
9. Notwithstanding any terms of the Engagement Letter to the contrary, nothing in this Order is intended to or shall otherwise authorize the services provided for in section 1(m) of the Engagement Letter, and the approval of such services shall remain subject to further notice and a hearing; *provided, however*, that nothing in this Order shall impair, prejudice, waive or otherwise affect the ability of the Debtors or PJS to seek authorization and approval of such services upon proper notice and a hearing, and the rights of the U.S. Trustee to oppose such relief are reserved.

10. Notwithstanding anything in the Application, the Engagement Letter or the attachments thereto to the contrary, reimbursement of expenses for legal advice is not being pre-approved as a term or condition of employment under section 328(a) of the Bankruptcy Code, and expense reimbursement requests for legal counsel shall remain subject to applicable law.

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

12. The Court shall retain jurisdiction with respect to all matters arising under or relating to the implementation and enforcement of this Order.

Dated: Wilmington, Delaware  
July 16, 2009



Kevin J. Carey  
Chief United States Bankruptcy Judge