

IN RE:

Debtors.

Case No. 09-12074 (KJC)

Jointly Administered

Ref. Docket No. 6

Upon consideration of the application (the "*Application*") of Building Materials

Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**") for entry of an order (a) authorizing the Debtors to employ and retain The Garden City Group ("**GCG**") as claims, noticing, solicitation, balloting, and tabulation agent for the Debtors; and (b) appointing GCG as agent of the Bankruptcy Court, all as set forth in the Motion; and upon the Street Declaration² in support thereof; and the Court having found that venue of this proceeding and the Motion 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 Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the

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

Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion 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 Motion 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. The Debtors are authorized to retain and employ GCG, effective as of the commencement of the Chapter 11 Cases, to perform the noticing and other services described in the Application and to receive, maintain, record, and otherwise administer the proofs of claim filed in the Chapter 11 Cases.
3. GCG is appointed as agent for the Clerk's Office and custodian of court record and, as such, is designated as the authorized repository for all proofs of claim filed in the Chapter 11 Cases and is authorized and directed to maintain an official claims register for each of the Debtors and to provide the Clerk's Office with a certified duplicate thereof on a monthly basis unless otherwise directed by the Clerk's Office.
4. GCG is authorized and directed to perform all ministerial, related tasks to process the proofs of claim and maintain claims registers, including, without limitation:
 - a. notifying all potential creditors of the filing of the bankruptcy petition and of the setting of the first meeting of creditors pursuant to section 341(a) of the Bankruptcy Code, under the proper provisions of the Bankruptcy Code and the Bankruptcy Rules;
 - b. assisting with and maintaining an official copy of the Debtors' schedules of assets and liabilities and statements of financial affairs (collectively, the "*Schedules*"), listing the Debtors' known creditors and the amounts owed thereto;

- c. designing, maintaining, and operating in conjunction with the Debtors a website, www.bmhcrestructuring.com, as a centralized location where the Debtors will provide information about the Debtors' cases, including, at the Debtors' discretion, certain orders, decisions, claims, or other documents filed in the Chapter 11 Cases, which allows parties to obtain copies of relevant documents in the Chapter 11 Cases;
- d. furnishing a form for the filing of proofs of claim, after approval of such notice and form by this Court, which proofs of claim shall include the amount and classification of each potential creditor's claim as set forth in the Schedules;
- e. filing with the Clerk, on a timely basis, all notices and other documents, as required by the Local Rules;
- f. docketing all claims received, maintaining the official claims register (the "**Claims Register**") for the Debtors on behalf of the Clerk, and providing the Clerk with certified duplicate unofficial Claims Register on a monthly basis, unless otherwise directed;
- g. specifying in the Claims Register 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, and (iv) the classification of the claim (e.g., secured, unsecured, priority, etc.);
- h. relocating, by messenger, all of the actual proofs of claim filed with the Court, if necessary to GCG, not less than weekly;
- i. recording all transfers of claims and providing any notices of such transfers required by Bankruptcy Rule 3001;
- j. making changes in the Claims Register pursuant to Court Order;
- k. upon completion of the docketing process for all claims received to date by the Clerk's office, turning over to the Clerk copies of the Claims Register for the Clerk's review;
- l. maintaining the official mailing list for each Debtor of all entities that have filed a proof of claim, which list shall be available upon request by a party in interest or the Clerk; and
- m. assisting with, among other things, the solicitation, balloting, and tabulation of votes as required in furtherance of confirmation of plan(s) of reorganization.

5. The indemnification provisions of the Agreement 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, GCG, in accordance with the Agreement and to the extent permitted by applicable law, for any claim arising from, related to, or in connection with GCG's performance of the services described in the Agreement;
- (b) GCG shall not be entitled to indemnification, contribution, or reimbursement for services other than the claims agent services provided under the Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court;
- (c) Notwithstanding anything to the contrary in the Agreement, 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 either (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 GCG'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 Agreement 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, GCG 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 Agreement, including without limitation the advancement of defense costs, GCG must file an application before this Court, and the Debtors may not pay any such amounts to GCG 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 GCG for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify GCG.

6. GCG is authorized to take such other action as is reasonably necessary to comply with all duties set forth in the Application and this Order.

7. The Debtors are authorized to compensate GCG on a monthly basis, in accordance with the Services Agreement, dated April 17, 2009 and annexed to Application as *Exhibit A*, upon the receipt of reasonably detailed invoices setting forth the services provided by GCG in the prior month and the rates charges for each, and to reimburse GCG for all reasonable and necessary expenses it may incur upon the presentation of appropriate documentation and without the necessity for GCG to file an application for compensation or reimbursement with the Court; provided, however, that GCG will forward copies of its invoices to the Office of the U.S. Trustee and any official committee appointed in these cases at the same time such invoices are delivered to the Debtors; provided further, that GCG acknowledges that this Court retains jurisdiction to resolve any disputes regarding such invoices if the Debtors, the Office of the U.S. Trustee, and/or any official committee objects.

8. In the event GCG is unable to provide the services set out in this Order, GCG will immediately notify the Clerk's Office and the Debtors' attorneys and cause all original proofs of claim and computer information to be turned over to another claims agent with the advice and consent of the Clerk's Office and the Debtors' attorneys.

9. In the event GCG's services are terminated, GCG shall perform its duties until the occurrence of a complete transition with the Clerk's Office or any successor claims/noticing agent.

10. Nothing contained in this Order obligates a successor trustee to utilize GCG's services.

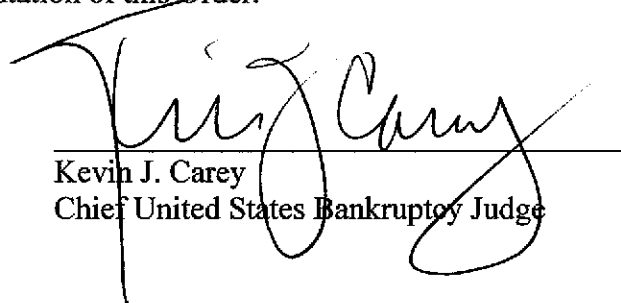
11. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

12. Notice of the Application as provided therein shall be deemed good and sufficient notice of such motion and satisfies the requirements of applicable rules.

13. Pursuant to Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

14. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
June 17, 2009



Kevin J. Carey
Chief United States Bankruptcy Judge