



FILED & JUDGMENT ENTERED
Steven T. Salata

November 8 2017

Clerk, U.S. Bankruptcy Court
Western District of North Carolina

Laura T Beyer

Laura T. Beyer
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re

BESTWALL LLC,¹

Debtor.

Chapter 11

No. 17-31795

**ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF DONLIN,
RECANO AND COMPANY, INC. AS CLAIMS, NOTICING AND BALLOT AGENT**

This matter coming before the Court on the *Application of the Debtor for an Order Authorizing the Retention and Employment of Donlin, Recano and Company, Inc. as Claims, Noticing and Ballot Agent* (Docket No. 9) (the "Application"),² filed by the debtor and debtor in possession in the above-captioned case (the "Debtor"); the Court having reviewed the Application and the terms set forth in the Engagement Agreement attached to the Application as

¹ The last four digits of the Debtor's taxpayer identification number are 5815. The Debtor's address is 100 Peachtree Street, N.W., Atlanta, Georgia 30303.

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

Exhibit A; the Court having reviewed the Agent Declaration and the First Day Declaration; the Court having considered the statements of counsel with respect to the Application at a hearing before the Court (the "Hearing"); the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and (d) notice of the Application and the Hearing was sufficient under the circumstances and no other or further notice is required; it appearing that receiving, docketing and maintaining proofs of claim would be unduly time consuming and burdensome for the Clerk's Office; the Court being authorized under 28 U.S.C. § 156(c) to utilize, at the Debtor's expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim and related claims, noticing and ballot services; the Court being satisfied that DRC does not hold an interest adverse to the Debtor or its estate respecting the matters upon which it is to be engaged; it appearing that the employment of DRC as claims, noticing and ballot agent is in the best interests of the Debtor, its estate and parties in interest; and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Application is GRANTED.
2. The Debtor is authorized to retain and employ DRC as its Claims and Noticing Agent in the Chapter 11 Case, in accordance with 28 U.S.C. § 156(c), section 105(a) of the Bankruptcy Code and Bankruptcy Rule 2002, on the terms and conditions set forth in the Application and the Engagement Agreement, as of the Petition Date (the "Engagement").
3. The Debtor is authorized to compensate DRC in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting

forth the services provided by DRC and the rates charged for each, and to reimburse DRC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for DRC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

4. DRC shall maintain records of all services performed, showing dates, categories of services, fees charged and expenses incurred and serve monthly invoices on (a) the Debtor, (b) counsel for the Debtor and (c) the Bankruptcy Administrator.

5. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of DRC under this Order shall be an administrative expense of the Debtor's estate.

6. DRC may apply the Retainer to all prepetition invoices and, thereafter, DRC may hold the remaining balance of the Retainer under the Engagement Agreement during the Chapter 11 Case as security for the payment of fees and expenses incurred under the Engagement Agreement.

7. The Debtor shall indemnify DRC under the terms of the Engagement Agreement, as modified pursuant to this Order.

8. DRC 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 therefor are approved by the Court.

9. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtor shall have no obligation to indemnify DRC, or provide contribution or reimbursement to DRC, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from DRC's gross negligence, willful misconduct, fraud or

bad faith; (ii) for a contractual dispute in which the Debtor alleges the breach of DRC's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible under applicable law; 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 DRC should not receive indemnity, contribution or reimbursement under the terms of the Engagement Agreement, as modified by this Order.

10. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in the Chapter 11 Case (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing these Chapter 11 Case, DRC believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution and/or reimbursement obligations under the Engagement Agreement (as modified by this Order), including the advancement of defense costs, DRC must file an application therefor in this Court, and the Debtor may not pay any such amounts to DRC 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 DRC for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtor's obligation to indemnify DRC. All parties in interest shall retain the right to object to any demand by DRC for indemnification, contribution or reimbursement.

11. In the event DRC is unable to provide the services set out in this Order, DRC will immediately notify the Clerk and the Debtor's attorneys and, upon approval of the Court, cause all original proofs of claim and computer information to be turned over to another claims, noticing and ballot agent with the advice and consent of the Clerk and the Debtor's attorneys.

12. Except as ordered by the Court pursuant to section 107 of the Bankruptcy Code, all papers, dockets or other material filed in this case with DRC shall be deemed public records open to examination by any entity at reasonable times without charge. DRC may charge a fee for copying requested material, but the fee shall not exceed that charged pursuant to the Bankruptcy Court Fee Schedule issued by the Judicial Conference of the United States in accordance with section 1930(b) of title 28 of the United States Code.

13. DRC shall not cease providing claims processing services during the Chapter 11 Case for any reason, including nonpayment, without an order of the Court.

14. In the event of any inconsistency between the Engagement Agreement, the Application and this Order, this Order shall govern.

15. Any party shall be entitled to request that the Court reconsider entry of this Order by filing a motion for reconsideration within 14 days service of this Order.

16. The Debtor and DRC are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

17. The Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation or enforcement of this Order.

This Order has been signed electronically.
The Judge's signature and Court's seal appear
at the top of the Order.

United States Bankruptcy Court