

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re

OPEN ROAD FILMS, LLC, a Delaware  
limited liability company, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No.: 18-12012 (LSS)

(Jointly Administered)

**Ref. Docket No. 3**

**ORDER AUTHORIZING RETENTION AND APPOINTMENT OF  
DONLIN, RECANO & COMPANY, INC. AS CLAIMS AND NOTICING  
AGENT FOR THE DEBTORS PURSUANT TO 28 U.S.C. § 156(c),  
NUNC PRO TUNC TO THE PETITION DATE**

Upon the application (the “Application”)<sup>2</sup> of Open Road Films, LLC and its affiliated debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Cases”) for entry of an order pursuant to section 156(c) of title 28 of the United States Code (the “Bankruptcy Code”), Rule 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the Debtors to retain and appoint Donlin, Recano & Company, Inc. (“DRC”) as claims and noticing agent in the Cases; and upon consideration of the Voorhies Declaration submitted in support of the Application; and upon consideration of the First Day Declaration; and the Court being satisfied, based on the representations made in the Voorhies Declaration, that DRC does not represent or hold any interest adverse to the Debtors or the

<sup>1</sup> The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Open Road Films, LLC (4435-Del.); Open Road Releasing, LLC (4736-Del.); OR Productions LLC (5873-Del.); Briarcliff LLC (7304-Del.); Open Road International LLC (4109-Del.); and Empire Productions LLC (9375-Del.). The Debtors’ address is 2049 Century Park East, 4th Floor, Los Angeles, CA 90067.

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

Debtors' estates; and it appearing that the Court has jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that the Application is a core matter pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these Cases and of the Application is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Application has been given under the circumstances, and that no other or further notice need be given; and it appearing that the employment of DRC is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. Notwithstanding the terms of the Engagement Agreement attached to the Application, the Application is approved solely as set forth in this Order.
2. The Debtors are authorized to retain DRC effective as of the Petition Date under the terms of the Engagement Agreement, and DRC is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in the Cases, and all related tasks, all as described in the Application.
3. DRC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in the Cases and is authorized and directed to maintain official claims registers for each of the Debtors, to provide the Clerk with a certified duplicate thereof upon the request of the Clerk, and to provide public access to every proof of claim unless otherwise ordered by the Court.

4. DRC is authorized and directed to obtain a post office box or address for the receipt of proofs of claim.

5. DRC is authorized to take such other action to comply with all duties set forth in the Application.

6. The Debtors are 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.

7. DRC shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee, if any, monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute that may arise relating to the Engagement Agreement or monthly invoices, and the parties may seek resolution of the matter from the Court if resolution is not achieved.

9. 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 Debtors' estates.

10. The portion of section 4 of the Engagement Agreement addressing late charges shall be null, void, and of no further force and effect for postpetition services rendered by DRC.

11. DRC may apply its prepetition retainer to all prepetition invoices, and thereafter the prepetition retainer shall also be applied to any postpetition invoices until the retainer amount has been reduced to \$50,000 (the “DRC Retainer”). DRC may hold the DRC Retainer under the Engagement Agreement during the Cases as security for the payment of fees and expenses under the Engagement Agreement. Following the termination of the Engagement Agreement, DRC shall return to the Debtors any amount of the DRC Retainer that remains.

12. The Debtors shall indemnify DRC under the terms of the Engagement Agreement.

13. 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 therefore are approved by the Court.

14. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors 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, or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of DRC’s contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co., et al.*, 315 F.3d 217 (3d Cir. 2003); 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.

15. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in the Cases (that order having become a final order no longer subject to appeal) or (ii) the entry of an order closing the Cases, DRC 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 Engagement Agreement (as modified by this Order), including without limitation the advancement of defense costs, DRC must file an application therefore in this Court, and the Debtors 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 Debtors' obligation to indemnify DRC. All parties in interest shall retain the right to object to any demand by DRC for indemnification, contribution or reimbursement.

16. In the event DRC is unable to provide the services set out in this order, DRC will immediately notify the Clerk and Debtors' attorneys and cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and Debtors' attorneys.

17. The Debtors may submit a separate retention application, pursuant to Bankruptcy Code section 327 and/or any applicable law, for work that is to be performed by DRC that is not specifically authorized by this Order.

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

19. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains jurisdiction and power with respect to all matters arising from or related to the implementation of this Order.

20. DRC shall not cease providing claims processing services during the Cases for any reason, including nonpayment, without an order of the Court.

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

Dated: Wilmington, Delaware  
September 7, 2018



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Laurie Selber Silverstein  
United States Bankruptcy Judge