

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

OPTIMA SPECIALTY STEEL, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-12789 (_____)

(Joint Administration Requested)

APPLICATION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS TO EMPLOY AND RETAIN GARDEN CITY GROUP, LLC AS CLAIMS AND NOTICING AGENT *NUNC PRO TUNC* TO THE PETITION DATE PURSUANT TO 28 U.S.C. § 156(c), 11 U.S.C. § 105(a) AND LOCAL RULE 2002-1(f)

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) hereby move the Court (this “**Application**” or “**Section 156(c) Application**”) pursuant to section 156(c) of title 28 of the United States Code, section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), 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**”) for entry of an order authorizing and approving the employment and retention of Garden City Group, LLC (“**GCG**”) as claims and noticing agent (the “**Claims and Noticing Agent**”) *nunc pro tunc* to the Petition Date (as defined herein). In support of this Application, the Debtors respectfully state as follows:

¹ The Debtors in these Chapter 11 Cases, along with the business addresses and the last four (4) digits of each Debtor’s federal tax identification number, if applicable, are: Optima Specialty Steel, Inc., 200 S. Biscayne Blvd., Suite 5500, Miami, FL 33131-2310 (0641); Michigan Seamless Tube LLC, 400 McMunn Street, South Lyon, MI 48178 (3850); Niagara LaSalle Corporation, 1412 150th Street, Hammond, IN 46327 (0059); KES Acquisition Company d/b/a Kentucky Electric Steel, 2704 South Big Run Road, Ashland, KY 41102 (2858); and The Corey Steel Company, 2800 South 61st Court, Cicero, IL 60804 (0255).

Status of the Case

1. On the date hereof (the “**Petition Date**”), the Debtors commenced these cases (the “**Chapter 11 Cases**”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. The Debtors have continued in possession of their properties and are operating and managing their businesses as debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner, and a creditors’ committee has not yet been appointed in these Chapter 11 Cases.

Jurisdiction, Venue and Statutory Predicates

4. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

5. The statutory bases for the relief requested herein are section 105(a) of the Bankruptcy Code, 28 U.S.C. § 156(c) and Local Rule 2002-1(f).

Background

6. The Debtors are leading independent manufacturers of specialty steel products. These steel products include (i) special bar quality and merchant bar quality hot rolled steel bars, (ii) value-added precision-tolerance, cold drawn seamless tubes, and (iii) high quality engineered cold finished steel bars. The Debtors’ products are utilized across a diversified range of end markets, including transportation (e.g. automotive), energy (e.g. oil and gas shale extraction), agriculture, power generation, yellow goods/construction equipment, railroad car, industrial chain manufacturing, and trailer support beam flanges.

7. All of the Debtors' manufacturing facilities are located in the United States, and each of the Debtors' operating units have operated in the steel industry for more than 50 years. In the aggregate, the Debtors have more than one thousand customers in the United States. These customers span many industries including transportation, energy, agriculture and power generation. The Debtors collectively employ more than 900 people.

8. Although the Debtors' business is fundamentally sound, it has been affected by a period of macroeconomic and industry distress. These external and other factors rendered the Debtors incapable of repaying their long-term indebtedness at maturity. Accordingly, the Debtors have sought protection under Chapter 11 of the Bankruptcy Code to provide "breathing room" during which they will assess strategic options, address operational issues and consider restructuring proposals. During this period, the Debtors intend to continue their operations in the ordinary course of business.

9. A detailed factual background of the Debtors' business and operations, as well as the events precipitating the commencement of these Chapter 11 Cases, is more fully set forth in the *Declaration of Mordechai Korf in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* (the "**First Day Declaration**"), filed contemporaneously herewith and incorporated herein by reference.

Relief Requested

10. By this Application, pursuant to 28 U.S.C. § 156(c), section 105(a) of the Bankruptcy Code and Del. Bankr. L.R. 2002-1(f), the Debtors request entry of an order substantially in the form of **Exhibit C** hereto (the "**Proposed Order**") appointing GCG as the Claims and Noticing Agent and authorizing GCG to assume full responsibility for, among other things, the distribution of notices and the maintenance, processing and docketing of proofs of

claim filed in the Debtors' cases.¹ The Debtors' selection of GCG to serve as the Claims and Noticing Agent has satisfied the Court's *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)*, in that the Debtors have obtained and reviewed engagement proposals from at least two (2) other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtors submit, based on all engagement proposals obtained and reviewed, that GCG's rates are competitive and reasonable, given GCG's quality of services and expertise. The terms of retention, including GCG's fees, are set forth in the Bankruptcy Administration Agreement annexed hereto as **Exhibit A** (the "**Engagement Agreement**"); provided, however, that GCG is seeking approval solely of the terms and provisions as set forth in this Application and as modified by the proposed order attached hereto.

11. Although the Debtors have not yet filed their schedules of assets and liabilities, they anticipate that there will be in excess of several thousand entities to be noticed. In view of the number of anticipated claimants and the complexity of the Debtors' business, the Debtors submit that the appointment of a claims and noticing agent is both necessary and in the best interests of both the Debtors' estates and their creditors.

12. GCG has acted as the claims and noticing agent in numerous cases of comparable size, including several cases administered (currently or previously) in the United States Bankruptcy Court for this District. *See, e.g., In re UCI International, LLC, et al.*, Case No. 16-11354 (MFW); *In re American Apparel, Inc., et al.*, Case No. 15-12055 (BLS) (Bankr. D. Del. October 6, 2015); *In re Samson Resources Corporation, et al.*, Case No. 15-11934 (CSS) (Bankr. D. Del. Sept. 18, 2015); *In re Quicksilver Res. Inc.*, Case No. 15-10585 (LSS) (Bankr. D. Del.

¹ By separate application, the Debtors will seek authorization to retain and employ GCG as administrative agent in these Chapter 11 Cases pursuant to section 327(a) of the Bankruptcy Code because the administration of these Chapter 11 Cases will require GCG to perform duties outside the scope of 28 U.S.C. § 156(c).

March 17, 2015); In re ProNerve Holdings, LLC, Case No.-10373 (KJC) (Bankr. D. Del., Feb. 24, 2015); In re AmCad Holdings, LLC, Case No. 14-12168 (MFW) (Bankr. D. Del. Sept. 19, 2014); In re ZCO Liquidating Corp. (f/k/a OCZ Tech. Grp., Inc.), Case No. 13-13126 (PJW) (Bankr. D. Del. Dec. 11, 2013); In re Savient Pharm., Inc., Case No. 13-12680 (MFW) (Bankr. D. Del. Oct. 14, 2013).

13. By appointing GCG as the Claims and Noticing Agent in these Chapter 11 Cases, the distribution of notices and the processing of claims will be expedited, and the clerk's office will be relieved of the administrative burden of processing what may be an overwhelming number of claims. In support of this Application, the Debtors submit the affidavit of Craig E. Johnson, GCG's Assistant Vice President, Operations attached hereto as **Exhibit B** (the "**Johnson Affidavit**").

14. This Application pertains only to the work to be performed by GCG as the Claims and Noticing Agent under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 2002-1(f), and any work to be performed by GCG outside of this scope is not covered by this Section 156(c) Application or by any order granting approval hereof. Specifically, as the Claims and Noticing Agent, GCG will perform the following tasks (the "**Claims and Noticing Services**"), as well as all quality control relating thereto:

- i. Prepare and serve required notices and documents in the cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of the cases and the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims and objections to claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtors' plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan, (vii) any motion to convert, dismiss, appoint a trustee, or appoint and examiner filed by the United States Trustee's Office, and (viii) all other notices, orders, pleadings, publications and other documents as the Debtors or Court may

deem necessary or appropriate for an orderly administration of the cases;

- ii. Maintain an official copy of the Debtors' schedules of assets and liabilities and statements of financial affairs (collectively, "**Schedules**"), listing the Debtors' known creditors and the amounts owed thereto;
- iii. Maintain (i) a list of all potential creditors, equity holders and other parties-in-interest; and (ii) a "core" mailing list consisting of all parties described in sections 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update said lists and make said lists available upon request by a party-in-interest or the Clerk;
- iv. Furnish a notice to all potential creditors of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- v. Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- vi. For *all* notices, motions, orders or other pleadings or documents served, prepare and file or caused to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- vii. Process all proofs of claim or proofs of interest received, including those received by the Clerk's Office, and check said processing for accuracy, and maintain the original proofs of claim or proofs of interest in a secure area;
- viii. Maintain the official claims register for each Debtor (the "**Claims Registers**") on behalf of the Clerk; upon the Clerk's request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers 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, (iv) the amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), (vi) the applicable Debtor, and (vii) any disposition of the claim;

- ix. File an updated claims register with the Court, in alphabetical and/or numerical order, upon request and direction of the Clerk of the Court;
- x. Allow public access to claims and the claims register at no charge;
- xi. Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- xii. Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e); provided, however, that if any evidence of transfer of claim(s) is filed with the Court pursuant to Bankruptcy Rule 3001(e), and if the evidence of transfer or notice thereof executed by the parties purports to waive the 21-day notice and objection period required under Bankruptcy Rule 3001(e), then GCG may process the transfer of claim(s) to change the name and address of the claimant of such claim to reflect the transfer, and the effective date of such transfer will be the date the evidence of such transfer was docketed in the case;
- xiii. Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of the Claims and Noticing Agent, not less than weekly;
- xiv. Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the claims register for the Clerk's review (upon the Clerk's request);
- xv. Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register;
- xvi. Assist in the dissemination of information to the public and respond to requests for administrative information regarding the case as directed by the Debtors or the Court, including through the use of a case website and/or call center;
- xvii. Provide such other related claims and noticing services as the Debtors may require in connection with these chapter 11 cases;
- xviii. If a case is converted to chapter 7, contact the Clerk's Office within three (3) days of the notice to Claims and Noticing Agent of entry of the order converting the case;
- xix. Thirty (30) days prior to the close of these cases, to the extent practicable, request that the Debtors submit to the Court a proposed Order dismissing the Claims and Noticing Agent and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of

these cases;

- xx. Within fourteen (14) days of entry of an Order dismissing a case or within thirty (30) days of entry of a Final Decree, (a) forward to the Clerk an electronic version of all imaged claims; (b) upload the creditor mailing list into CM/ECF and (c) docket a Final Claims Register. If a case has jointly-administered entities, one combined register shall be docketed in the lead case containing claims of all cases. The Claims and Noticing Agent shall further box and transport all original claims to the Philadelphia Federal Records Center, 14470 Townsend Road, Philadelphia, Pennsylvania 19154 and docket a completed SF-135 Form indicating the accession and location numbers of the archived claims; and
- xxi. Within fourteen (14) days of entry of an Order converting a case, (a) forward to the Clerk an electronic version of all imaged claims; (b) upload the creditor mailing list into CM/ECF and (c) docket a Final Claims Register. If a case has jointly-administered entities, one combined register shall be docketed in the lead case containing claims of all cases. A Final Claims Register shall also be docketed in each jointly-administered case containing the claims of only that specific case. The Claims and Noticing Agent shall further box and transport all original claims to the Philadelphia Federal Records Center, 14470 Townsend Road, Philadelphia, Pennsylvania 19154 and docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

15. Additionally, to the extent any notice served is required to be given via regular mail, GCG will, before mailing the notice of commencement or key matrix mailings, run the list of creditors and equity security holders through (i) the National Change of Address software maintained by the United States Postal Service (the “USPS”) and (ii) standardization and verification software that is CASS (Coding Accuracy Support System) certified by the USPS (clauses (i) and (ii) collectively, the “USPS Software”) to update any addresses provided by the Debtors based on their books and records and to conform such records to USPS standards. If the USPS Software determines that a mailing address has changed, the Debtors propose that GCG shall mail documents to the updated address; provided, however, that GCG shall be under no obligation to mail to the original address. If mail is returned to GCG as undeliverable with a forwarding address, the Debtors propose that GCG shall re-mail the document to the new address

and update its mailing database accordingly. If mail is returned to GCG as undeliverable with no forwarding address, the Debtors propose that GCG should be under no further obligation to mail any notices or other pleadings to that address.

16. The Claims Registers shall be opened to the public for examination without charge during regular business hours and on a case-specific website maintained by GCG.

17. Although by this Section 156(c) Application the Debtors do not propose to retain GCG as a professional under Bankruptcy Code section 327, to the best of GCG's knowledge, and except as set forth in the Johnson Affidavit, GCG neither holds nor represents an interest materially adverse to the Debtors' estates nor has a connection to the Debtors, their creditors, or their related parties with respect to any matter for which GCG will be employed. GCG may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which GCG serves or has served in a neutral capacity as claims and noticing agent for another chapter 11 debtor. However, GCG shall not employ any past or present employees of the Debtors for work that involves the Chapter 11 Cases. Should GCG discover any new relevant factors or relationships bearing on the matters described herein during the period of its retention, GCG will use reasonable efforts to file promptly a supplemental declaration.

18. The Debtors respectfully request that the undisputed fees and expenses incurred by GCG in the performance of the above services be treated as administrative expenses of the Debtors' estates pursuant to 28 U.S.C. § 156(c) and 11 U.S.C. § 503(b)(1)(A) and be paid in the ordinary course of business without further application to or order of the Court. GCG agrees to maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and to serve monthly invoices on the Debtors, the Office of the United States Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors and any party-in-interest who specifically requests service of the monthly invoices. If

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

19. Prior to the Petition Date, the Debtors provided GCG a retainer in the amount of \$25,000. GCG seeks to first apply the retainer to all pre-petition invoices, and thereafter, to have the retainer replenished to the original retainer amount, and thereafter, to hold the retainer under the Engagement Agreement during the cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

20. As part of the overall compensation payable to GCG under the terms of the Engagement Agreement, the Debtors have agreed, subject to certain exceptions, to indemnify and hold harmless GCG and its directors, officers, employees, affiliates, and agents, against any losses incurred by GCG arising out of, in connection with, or related to (a) any gross negligence or willful misconduct by the Debtors, their employees, agents, or representatives, or misrepresentations made by such persons to third parties in connection with GCG's acts or omissions in connection with its rendering the Services (as defined in the Engagement Agreement); (b) any breach of the Engagement Agreement by any of the Debtors; or (c) any erroneous instructions or information provided to GCG by any of the Debtors for use in providing services pursuant to the Engagement Agreement.

21. In connection with its retention as Claims and Noticing Agent, GCG represents in the Johnson Affidavit, among other things, that:

- i. GCG will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these Chapter 11 Cases;
- ii. By accepting employment in these Chapter 11 Cases, GCG waives any rights to receive compensation from the United States government in connection with the Debtors' cases;

- iii. In its capacity as Claims and Noticing Agent in these Chapter 11 Cases, GCG will not be an agent of the United States and will not act on behalf of the United States; and
- iv. It is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged.

22. To the extent that there is any inconsistency between this Application, the Proposed Order and the Engagement Agreement, the Proposed Order shall govern.

23. This Section 156(c) Application complies with the *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)* and conforms to the standard Section 156(c) Application in use in this Court. The Debtors have provided copies of this Section 156(c) Application to the Clerk of Court and to the United States Trustee and submit that no further notice is necessary under the circumstances.

Notice¹

24. Notice of this Application has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) Wilmington Trust, National Association, as Indenture Trustee to the indentures governing the Secured Notes and Unsecured Notes; (c) creditors holding the forty (40) largest unsecured claims as set forth in the consolidated list filed with the Debtors’ petitions; (d) the Office of the United States Attorney for the District of Delaware; (e) the Internal Revenue Service; and (f) counsel for the Secured Noteholder Group. As the Application is seeking “first day” relief, within two business days of the hearing on the Application, the Debtors will serve copies of the Application and any order entered with respect to the Application in accordance

¹ Capitalized terms used in the Notice section but not otherwise defined in this Motion shall have the meanings ascribed to them in the relevant First Day Declaration.

with the Local Rules. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

25. No previous application for the relief sought herein has been made to this or any other court.

Conclusion

WHEREFORE, the Debtors respectfully request entry of an order (i) granting the relief requested herein; and (ii) granting the Debtors such other and further relief as the Court deems just and proper.

Dated: December 15, 2016

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro

Dennis A. Meloro (DE Bar No. 4435)
The Nemours Building
1007 North Orange Street, Suite 1200
Wilmington, Delaware 19801
Telephone: (302) 661-7000
Facsimile: (302) 661-7360
Email: melorod@gtlaw.com

-and-

Nancy A. Mitchell (*pro hac vice pending*)
Greenberg Traurig, LLP
200 Park Avenue
New York, New York 10166
Telephone: (212) 801-9200
Facsimile: (212) 801-6400
Email: mitchelln@gtlaw.com

-and-

Paul J. Keenan Jr. (*pro hac vice pending*)
John R. Dodd (*pro hac vice pending*)
Ari Newman (*pro hac vice pending*)
Greenberg Traurig, P.A.
333 S.E. 2nd Avenue, Suite 4400
Miami, FL 33131
Telephone: (305) 579-0500
Facsimile: (305) 579-0717
Email: keenanp@gtlaw.com

*Proposed Counsel for the Debtors
and Debtors-in-Possession*