

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

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|------------------------------------------------------------|---|------------------------------|
| |) | Chapter 11 |
| In re: |) | |
| |) | Case No. 17-11292 (___) |
| CST INDUSTRIES HOLDINGS INC., <i>et al.</i> , ¹ |) | Joint Administration Pending |
| |) | |
| Debtors. |) | |
| | | |

**DEBTORS’ APPLICATION FOR ENTRY OF AN ORDER
APPOINTING EPIQ BANKRUPTCY SOLUTIONS, LLC AS CLAIMS
AND NOTICING AGENT PURSUANT TO 28 U.S.C. § 156(c), 11 U.S.C. § 105(a),
BANKRUPTCY RULE 2002(f) AND LOCAL RULE 2002-1(f)**

The Debtors and Debtors-in-possession in the above-captioned case (the “Debtors”) hereby submit this application (the “Section 156(c) Application”) for entry of an order substantially in the form attached hereto as **Exhibit “A”** (the “Proposed Order”), pursuant to 28 U.S.C. §156(c), section 105(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), Rule 2002(f) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local 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”), appointing Epiq Bankruptcy Solutions, LLC (“Epiq”) as claims and noticing agent (the “Claims Agent”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) of the Debtors. In support of the Section 156(c) Application, the Debtors submit the *Declaration of Kathryn Tran in Support of the Debtors’ Application for Entry of an Order Appointing Epiq Bankruptcy Solutions, LLC as Claims and Noticing Agent* (the “Claims Agent Declaration”), attached hereto as **Exhibit “B”**, and respectfully represent and set forth as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: CST Industries Holdings Inc. (4872), CST Industries, Inc. (9554), CST Power & Construction, Inc. (9480). The Debtors’ headquarters are located at: 903 E. 104th Street, Suite 900, Kansas City, Missouri 64131.

Jurisdiction and Venue

1. The Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these proceedings and the Application in this Court is proper under 28 U.S.C. §§ 1408 and 1409.

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

Background

3. On June 9, 2017, the Debtors commenced the above-captioned Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”).

4. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. As of this date, no trustee, examiner, or statutory committee has been appointed in these Chapter 11 Cases.

5. A detailed description of the Debtors’ business and the reasons for filing these Chapter 11 Cases is set forth in the *Declaration of Timothy J. Carpenter, Chief Executive Officer of CST Industries Holdings, Inc., in Support of First Day Relief* (the “Carpenter Declaration”) which is incorporated herein by reference.

Relief Requested

6. By this Section 156(c) Application, the Debtors seek entry of an order appointing Epiq as the Claims Agent to assume full responsibility for the distribution of notices and the maintenance, processing and docketing of proofs of claim filed in the Debtors’ cases. The terms of retention are set forth in the Engagement Agreement annexed hereto as **Exhibit “C”** (the “Engagement Agreement”); provided, however, that the Claims Agent is seeking approval solely

of the terms and provisions as set forth in this Section 156(c) Application and the proposed order attached hereto.

7. The Debtors' selection of Epiq to act as the Claims 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, noticing, and balloting agents to ensure selection through a competitive process. Moreover, the Debtors submit, based on all engagement proposals obtained and reviewed, that Epiq's rates are competitive and reasonable given Epiq's quality of services and expertise.

8. Although the Debtors have not yet filed their schedules of assets and liabilities, they anticipate that there will be in excess of 200 entities to be noticed. In view of the number of anticipated claimants and the complexity of the Debtors' businesses, the Debtors submit that the appointment of a claims, noticing, and balloting agent is both necessary and in the best interests of the Debtors' estates and their creditors.

9. Epiq has acted as the claims, noticing, and balloting agent in numerous cases of comparable size, including: *In re American Gilsonite Company*, Case No. 16-36391(CSS) (Bankr. D. Del. October 24, 2016); *In re Horsehead Holdings, Inc.*, Case No. 16-10287 (CSS) (Bankr. D. Del. February 2, 2016); *In re The SCOOTER Store Holdings, Inc.*, Case No. 13-10904 (PJW) (Bankr. D. Del. April 15, 2013); *In re Rotech Healthcare Inc.*, Case No. 13-10741 (PJW) (Bankr. D. Del. April 8, 2013); *In re Dex One Corp.*, No. 13-10533 (Bankr. D. Del. Apr. 10, 2013); *In re SuperMedia Inc.*, No. 13-10545 (Bankr. D. Del. Apr. 10, 2013); *In re Prince Sports, Inc.*, No. 12-11439 (Bankr. D. Del. May 2, 2012); *In re Bicent Holdings LLC*, Case No. 12-11304 (KG) (Bankr. D. Del. Apr. 24, 2012); *In re LAD, LLC*, Case No. 11-12010 (KG)

(Bankr. D. Del. June 27, 2011); *In re Allen Family Foods, Inc.*, Case No. 11-11764 (KJC) (Bankr. D. Del. June 9, 2011); *In re Signature Styles, LLC*, Case No. 11-11733 (KG) (Bankr. D. Del. June 6, 2011); *In re Indianapolis Downs, LLC*, Case No. 11-11046 (BLS) (Bankr. D. Del. Apr. 7, 2011); *In re Anchor Blue Holding Corp.*, Case No. 11-10110 (PJW) (Bankr. D. Del. Jan. 11, 2011).

10. Epiq is one of the country's leading chapter 11 administrators with vast experience in noticing and claims processing. Epiq specializes in Claims Agent services, and has a proprietary claims management system in which claims are effectively managed for the Clerk's Office. The Debtors have selected Epiq as their Claims Agent because of the firm's abilities and experience in serving in such capacity in chapter 11 cases of this size as well as the reasonableness of its fees.

11. By appointing Epiq as the Claims Agent in these Chapter 11 Cases, parties in interest will benefit from Epiq's significant experience and the efficient and cost-effective methods that it has developed. Additionally, appointing Epiq as the Claims Agent in these Chapter 11 Cases will expedite the distribution of notices and the processing of claims, 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 Section 156(c) Application, the Debtors submit the Claims Agent Declaration, attached hereto as **Exhibit "B"**.

12. This Section 156(c) Application pertains only to the work to be performed by the Claims 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 the Claims Agent outside of this scope is not covered by this Section 156(c) Application or by any Order granting approval hereof.

Specifically, the Claims Agent will perform the following tasks in its role as claims and noticing agent (the “Claims Services”), as well as all quality control relating thereto:

- (a) Prepare and serve required notices and documents in these Chapter 11 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 case and the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a sale of the Debtors’ assets or 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 and (vii) all other notices, orders, pleadings, publications and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of these cases.
- (b) Maintain an official copy of the Debtors’ schedules of assets and liabilities and statement of financial affairs (collectively, “Schedules”), listing the Debtors’ known creditors and the amounts owed thereto;
- (c) 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;
- (d) 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;

- (e) Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- (f) 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 numbers(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;
- (g) Process all proofs of claim received, including those received by the Clerk's Office, and check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- (h) Maintain the official claims register for the Debtors (the "Claims Register") on behalf of the Clerk; upon the Clerk's request, provide the Clerk with certified, duplicate unofficial Claims Register; and specify 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, (iv) the amount asserted, (v) the asserted classification(s) of the claim (e.g., secured, unsecured, priority, etc.), and (vi) any disposition of the claim;
- (i) Implement necessary security measures to ensure the completeness and integrity of the Claims Register and the safekeeping of the original claims;
- (j) Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- (k) Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of Claims Agent, not less than weekly;
- (l) 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);

- (m) 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;
- (n) 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.
- (o) If these cases are converted to a chapter 7, contact the Clerk's Office within three (3) days of the notice to Claims Agent of entry of the order converting the case;
- (p) Thirty (30) days prior to the close of these Chapter 11 Cases, to the extent practicable, request that the Debtors submit to the Court a proposed Order dismissing the Claims Agent and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of the case;
- (q) Within seven (7) days of notice to Claims Agent of entry of an order closing these Chapter 11 Cases, provide to the Court the final version of the claims register as of the date immediately before the close of these Chapter 11 Cases; and
- (r) At the close of these Chapter 11 Cases, box and transport all original documents, in proper format, as provided by the Clerk's Office, to (i) the Federal Archives Record Administration, located at Central Plains Region, 200 Space Center Drive, Lee's Summit, MO 64064, or (ii) any other location requested by the Clerk's Office.

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

14. Epiq shall not employ any past or present employee of the Debtors for work that involves the Debtors' bankruptcy cases.

15. The Debtors respectfully request that the undisputed fees and expenses incurred by Epiq 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 section 503(b)(1)(A) of the Bankruptcy Code and be paid in the ordinary course of business without further application to or order of the Court. Epiq 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, if any, 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.

16. The Claims Agent will bill for fees and expenses pursuant to the terms of the Engagement Agreement (Exhibit C).

17. Prior to the Petition Date, the Debtors provided Epiq a retainer in the amount of \$25,000.00. Epiq seeks to first apply the retainer to all pre-petition invoices, and to retain any unapplied portion of as a retainer throughout the pendency of these cases.

18. In connection with its retention as claims and noticing agent, Epiq represents in the Claims Agent Declaration (Exhibit B), among other things, that:

- (a) Epiq 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;
- (b) By accepting employment in the case, Epiq waives any rights to receive compensation from the United States government in connection with the Debtors' Chapter 11 Cases
- (c) In its capacity as the claims, noticing, and balloting agent in these Chapter 11 Cases, Epiq will not be an agent of the United States and will not act on behalf of the United States; and

- (d) It is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matter upon which it is to be engaged.

19. To the extent that there is any inconsistency amongst this Section 156(c) Application, the order granting the relief requested in this Section 156(c) Application (the “Retention Order”), and the Engagement Agreement, the Retention Order shall govern.

20. 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.

Notice

21. No trustee, examiner or creditors’ committee has been appointed in these Chapter 11 Cases. Notice of the hearing of this Motion shall be provided to (i) the U.S. Trustee; (ii) counsel for BNP Paribas, as the administrative agent for the proposed DIP Lenders and for the prepetition secured lenders; (iii) counsel for the prepetition mezzanine lenders; (iv) those parties listed on the list of creditors holding the twenty (20) largest unsecured claims against the Debtors (on a consolidated basis), as identified in their chapter 11 petitions, and (v) the parties required to be served pursuant to Local Rule 9013-1(m)(iii). As this Section 156(c) Application is seeking first-day relief, notice of this Section 156(c) Application and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). Due to the urgency of the circumstances surrounding this Section 156(c) Application and the nature of the relief requested herein, the Debtors respectfully submits that no further notice of this Section 156(c) Application is required.

No Prior Request

22. No previous application for the relief requested herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit "A"**, approving the appointment of Epiq as the Claims Agent in these Chapter 11 Cases, and such other and further relief the Court deems just and proper.

Dated: June 9, 2017

/s/ Timothy J. Carpenter

Timothy J. Carpenter, Chief Executive Officer of
CST Industries Holdings, Inc.