

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

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In re: : Chapter 11  
: :  
ALSET OWNERS, LLC, *et al.*,<sup>1</sup> : Case No. 09-11960  
: (Joint Administered)  
Debtors. :  
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**Re: Docket No. 4**

**ORDER AUTHORIZING THE DEBTORS AND DEBTORS-IN-POSSESSION  
TO RETAIN AND EMPLOY BMC GROUP, INC. AS CLAIMS,  
NOTICING, AND BALLOTING AGENT PURSUANT TO 28 U.S.C.  
§ 156(c), RULE 2002(f) OF THE FEDERAL RULES OF BANKRUPTCY  
PROCEDURE AND LOCAL RULE 2002-1(f) AS OF THE PETITION DATE**

Upon the Application<sup>2</sup> of the above-captioned Debtors for entry of an order pursuant to 28 U.S.C. § 156(c), Bankruptcy Rule 2002 and Local Rule 2001-1(f), authorizing the Debtors to retain BMC Group, Inc. ("BMC"), as claims, noticing, and balloting agent (the "Claims Agent") to the Debtors; and upon the affidavit of Tinamarie Feil, which is annexed to the Application, wherein it appears that BMC does not, by reason of any direct or indirect relationship to, connection with or interest in the Debtors, hold or represent any interest adverse to the Debtors, their estates or any class of creditors or equity interest holders with respect to the matters upon which it is to be engaged, and is not connected with the Debtors, their creditors, other parties-in-interest, the United States Trustee or anyone employed by the Office of the United States Trustee, with respect to the matters upon which BMC is to be engaged; and it

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<sup>1</sup> The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016). The Debtors' service address is Altes, LLC/Setla, LLC, 1200 North Federal Highway, Suite 111-B, Boca Raton, FL 33432-2813.

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

appearing that BMC is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code; and it appearing that the relief requested therein is in the best interests of the Debtors, their estates and creditors; and no notice of the Application need be given pursuant to Local Rule 2002-1(f); and after due deliberation and sufficient cause appearing thereof; it is hereby

ORDERED, that the relief requested in the Application is hereby granted; and it is further

ORDERED, that the Debtors are hereby authorized to employ BMC as Claims Agent in these chapter 11 cases for the purposes set forth in the Application and the Agreement, attached to the Application as Exhibit A, effective as of the date of the commencement of these chapter 11 cases; and it is further

ORDERED, that 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, BMC, in accordance with the Agreement and to the extent permitted by applicable law, for any claim arising from, related to, or in connection with BMC’s performance of the services described in the Agreement;
- b. BMC 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 BMC’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 these chapter 11 cases, BMC 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, BMC must file an application before this Court, and the Debtors may not pay any such amounts to BMC 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 BMC for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify BMC;

and it is further

ORDERED, that BMC shall not cease providing services for any reason including nonpayment, without prior order of this Court authorizing BMC from doing so; and it is further

ORDERED, that the Debtors are hereby authorized to pay, without further order of this Court, the reasonable fees and expenses of BMC incurred in connection with services rendered to the Debtors as Claims Agent, from the assets of the Debtors' estates, upon BMC's submission, on a monthly basis, of reasonably detailed invoices to the Debtors, the Office of the United States Trustee, and any official committee(s) appointed in the Debtors' chapter 11 cases; provided, however, that such parties shall have 15 days from the submission of each such invoice to object thereto, and the Court shall resolve any such objections; and it is further

ORDERED, that this Court retains jurisdiction with respect to all matters arising from or relating to the implementation of this Order.

Dated: June 9, 2009

  
United States Bankruptcy Judge