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6 Attorneys for Debtor and Debtor in Possession
7 Heller Ehrman LLP

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 In re:
12 Heller Ehrman LLP,
13 Debtor

Case No.: 08-32514

Chapter 11

**APPLICATION OF DEBTORS FOR
ORDER UNDER 28 U.S.C. § 156(c)
AUTHORIZING THE RETENTION OF
BMC GROUP, INC., AS NOTICING,
CLAIMS, BALLOTING AND
ADMINISTRATIVE AGENT**

[NO HEARING REQUIRED]

18 Heller Ehrman LLP, as debtor and debtor in possession herein (the “Debtor”), hereby
19 submits this application (the “Application”) for entry of an order, pursuant to 28 U.S.C. § 156(c),
20 appointing, BMC Group, Inc. (“BMC”), effective as of December 28, 2009 (the “Petition Date”), as
21 the claims, noticing, balloting and administrative agent in this case. The Debtor does not believe
22 that BMC is a “professional person” within the meaning of 11 U.S.C. § 327(a).

23 In support of this Application, the Debtor relies on the contemporaneously filed Declaration
24 of Tinamarie A. Feil (the “Feil Declaration”). In addition, the Debtor respectfully represents as
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I.

JURISDICTION

The Court has jurisdiction over this Application pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), in that it is a matter concerning the administration of the Debtor’s estate. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought in this Application is 28 U.S.C. § 156(c).

II.

STATEMENT OF FACTS

A. General Background

The Debtor, a 118 year-old international law firm, is currently winding down its business and affairs following the adoption of a Plan of Dissolution by the shareholders of the Debtor’s limited partners in September, 2008. Although the Debtor is no longer engaged in the practice of law, there remain a substantial number of unperformed, yet necessary, tasks relating to winding down the business, maximizing the value of the Debtor’s assets for the benefit of its creditors and equity interest holders, and discharging the Debtor’s obligations to its former clients. Thus, the Debtor still maintains a workforce of approximately 54 employees to provide these necessary services, and incurs routine business expenses (including payroll, employee benefits, office space and equipment, insurance, and costs for other goods and services) as part of the winding down process. Among other things, winding down the Debtor’s business includes pursuing the collection of at least \$35 million in outstanding accounts receivable, coordinating and managing the transition and securing of client and firm business records, assisting in negotiations with key creditor constituencies, and performing a number of bookkeeping, office and administrative services.

B. The Debtor’s Assets And Liabilities.

As of the Petition Date, the Debtor’s principal assets are \$3.7 million in cash, accounts receivable with a face amount of \$52 million and an estimated recoverable value of \$35 million (or more), as well as various office fixtures, furniture and equipment and other receivables and a \$7 million equity investment in the Debtor’s errors and omissions insurer.

1 As of the Petition Date, the Debtor's liabilities consist primarily of the \$5.7 million in
2 obligations to Bank of America under a pre-petition secured credit facility, approximately \$10
3 million in accounts payable, \$4 million in taxes, pension and deferred compensation claims and
4 claims by former employees for accrued vacation time.

5 **III.**

6 **RELIEF REQUESTED**

7 By this Application, the Debtor seeks entry of an order, pursuant to 28 U.S.C. § 156(c),
8 authorizing and approving the retention of and appointing BMC, effective as of the Petition Date, as
9 claims, noticing, balloting and administrative agent, with compensation to be paid in the ordinary
10 course by the Debtor without need for further notice or hearing. Among other things, BMC will:

- 11 1. assist the Debtor, Debtor's Counsel and Office of the Clerk with noticing and
12 claims handling; and
- 13 2. assist the Debtor with the compilation, administration, evaluation and
14 production of documents and information as requested.

15 BMC is one of the country's leading chapter 11 administrators with experience in noticing,
16 claims processing, claims reconciliation and distribution. BMC has substantial experience in the
17 matters upon which it is to be engaged. BMC has acted as official claims agent in several cases in
18 this and other judicial districts including: Dana Corporation, American Commercial Lines, Sea
19 Containers Ltd, ATA Holdings Corp., Exide Technologies, Touch America, Farmland Industries,
20 TWA-American Airlines, Conesco, Inc., WR Grace, Fleming Companies, UHP Healthcare,
21 Musicland Holding Corp., and ATA Airlines, Inc. to name a few.

22 By appointing BMC as the claims, noticing, and balloting agent in this chapter 11 case,
23 creditors of the Debtor's estate will benefit from BMC's significant experience in acting as a claims,
24 noticing, and balloting agent in other cases and the efficient and cost-effective methods that BMC
25 has developed.

1 IV.

2 **SERVICES TO BE PROVIDED**

3 Given the various notices that will be sent out and the myriad of administrative issues that
4 may arise in this case, the Debtor seeks the appointment of BMC to assist them with the burden of
5 performing such tasks and with the administration of the claims and balloting processes.

6 The Debtor seeks an order appointing BMC to render the following services as claims,
7 noticing, balloting and administrative agent, without being exhaustive:

8 At the Debtor's, Debtor's Counsel's or the Clerk's Office's direction, as the case may be, and
9 in accordance with any court orders or rules in the bankruptcy case(s) (including any court order
10 authorizing BMC's engagement), BMC will:

- 11 (a) prepare and serve those notices required in the bankruptcy case(s);
- 12 (b) receive, record and maintain copies of all proofs of claim and proofs of
13 interest filed in the bankruptcy case(s);
- 14 (c) create and maintain the official claims register(s);
- 15 (d) receive and record all transfers of claims pursuant to Bankruptcy Rule
16 3001(e);
- 17 (e) maintain an up-to-date mailing list for all entities who have filed proofs of
18 claim and/or requests for notices in the bankruptcy case(s);
- 19 (f) assist the Debtor and Counsel with the administrative management,
20 reconciliation and resolution of claims;
- 21 (g) mail and tabulate ballots for purposes of plan voting;
- 22 (h) assist with the preparation and maintenance of the Debtor's Schedules of
23 Assets and Liabilities, Statements of Financial Affairs and other master lists and databases of
24 creditors, assets and liabilities,
- 25 (i) assist with the production of reports, exhibits and schedules of information for
26 use by the Debtor, Counsel or to be delivered to the Court, the Clerk's Office, the U.S.
27 Trustee or third parties;
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1 (j) provide other technical and document management services of a similar nature
2 requested by the Debtor or the Clerk's office;

3 (k) facilitate or perform distributions;

4 (l) maintain the Debtor's call center; and

5 (m) set up and maintain a public website.

6 The Debtor believes that the appointment of BMC as claims, noticing, balloting and
7 administrative agent is in the best interests of the estate. The Debtor also requests that the Clerk of
8 the Court release all filed claims directly to BMC.

9 In connection with its appointment as claims, noticing, balloting and administrative agent,
10 the Debtor understands and BMC acknowledges that, among other things: (1) BMC will not consider
11 itself employed by the United States government and shall not seek any compensation from the
12 United States government in its capacity as claims, noticing, balloting and administrative agent in
13 this chapter 11 case; (2) BMC will not be an agent of the United States and will not act on behalf of
14 the United States; and (3) BMC will not employ any past or present employees of the Debtor in
15 connection with its work as the claims, noticing, balloting and administrative agent in this chapter 11
16 case.

17 **V.**

18 **CLAIMS AGENT AGREEMENT**

19 Subject to this Court's approval, the Debtor seeks to employ BMC to provide the services
20 described herein pursuant to the terms of the Agreement for Services between the Debtor and BMC
21 (the "Agreement"). A copy of the Agreement is attached as **Exhibit A** to this Application.

22 BMC is a firm that specializes in providing claims management consulting and computer
23 services. The Debtor also may use BMC to provide the Debtor with training and consulting support
24 necessary to enable the Debtor to effectively manage and reconcile claims, and to provide the
25 requisite notices of the deadline for filing Proofs of Claim. In addition, the Debtor may utilize other
26 services offered by BMC, such as (a) providing other notices that will be required as this case
27 progresses, (b) tabulating acceptances and/or rejections to a plan of reorganization, and (c) providing
28 such other administrative related services that may be requested by the Debtor.

1 The compensation to be provided by the Debtor to BMC for services rendered is set forth in
2 detail in the Agreement and incorporated herein for all purposes. The Debtor proposes to pay BMC,
3 in the ordinary course and without need for further notice or order of the Court, its hourly rates in
4 effect from time to time and to reimburse BMC for its expenses according to its customary
5 reimbursement policies. As set forth in the Agreement, BMC's normal hourly rates range from
6 \$25.00 to \$250.00.

7 The Debtor does not believe that BMC is a "professional person" for purposes of section
8 327(a) of the Bankruptcy Code and should not be subject to the fee application process because
9 BMC will only be charged with administrative functions in this bankruptcy case.

10 BMC has not received any funds from the Debtor in the year prior to the Petition Date.
11 There are no amounts owed to BMC as of the Petition Date. To the best of the Debtor's knowledge,
12 there are no arrangements between BMC and any other entity for the sharing of compensation
13 received or to be received in connection with this case, except insofar as such compensation may be
14 shared among BMC's employees.

15 To the best of the Debtor's knowledge, and based upon and except as set forth in the Feil
16 Declaration filed concurrently herewith, BMC does not (i) represent any interest adverse to the
17 Debtor or its estate; (ii) have any connection with the Debtor or its directors and officers, creditors,
18 any other party in interest, their respective attorneys and accountants, the United States Trustee, or
19 any person employed in the office of the United States Trustee; or (iii) employ any person that is
20 related to a judge of this Court of the United States Trustee for Region 17. In addition, to the best of
21 the Debtor's knowledge and based on the Feil Declaration, BMC is a "disinterested person" under
22 applicable sections of the Bankruptcy Code.

23 VI.

24 **BASIS FOR RELIEF**

25 Under Bankruptcy Rule 2002(a), the Bankruptcy Court may direct that a person other than
26 the clerk serve notices upon creditors and parties in interest. Moreover, 28 U.S.C. § 156(c), which
27 governs the staffing and expenses of the Court, authorizes the Court to procure the services of third
28 parties to assist with noticing and other chapter 11 administrative matters:

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(c) Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate . . .

28 U.S.C. § 156(c).

After considering its quality of performance in other cases, the Debtor concluded that BMC was the best choice for claims, noticing, balloting and administrative agent in this case. The Debtor believes that the Agreement contemplates compensation at a level that is reasonable and appropriate for services of this nature, and is consistent with the compensation arrangement charged by BMC in other cases in which it has been retained to perform similar services. The Debtor needs to employ a claims, noticing, and balloting agent with proven competence, and believes that BMC so qualifies. It is therefore respectfully submitted that the appointment of BMC as claims, noticing, balloting and administrative agent in this case is in the best interests of the estate.

WHEREFORE, the Debtor respectfully requests that the Court enter an order pursuant to 28 U.S.C. § 156(c), effective as of the Petition Date, (1) appointing BMC Group, Inc. as claims, noticing, balloting and administrative agent in this case, (2) authorizing and approving the retention of BMC by the Debtor to perform services in accordance with this Application, and with compensation to be paid in the ordinary course and without need for further notice or order of the Court; and (3) granting such other and further relief as is just and proper.

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Dated: January 20, 2009

HELLER EHRMAN LLP

By /s/ Peter J. Benvenuti
Peter J. Benvenuti
Its Chair of the Dissolution Committee

Submitted by:

PACHULSKI STANG ZIEHL & JONES LLP

By /s/ John D. Fiero
John Fiero (CA Bar No. 136557)
Kenneth H. Brown (CA Bar No. 100396)
Miriam Khatiblou (CA Bar No. 178584)
Attorneys for Heller Ehrman, LLP, Debtor
and Debtor in Possession

EXHIBIT A

AGREEMENT FOR SERVICES

This Agreement (the "Agreement") is entered between Heller Ehrman LLP ("Customer") and BMC Group, Inc. ("BMC"). The services rendered by BMC pursuant to this Agreement will commence on the date first set forth above and will continue until the Agreement is terminated as set forth below.

TERMS AND CONDITIONS

I. SERVICES

In accordance with the terms and conditions contained in this Agreement and in the Fee Schedule annexed hereto, BMC agrees to provide services as follows: (a) assisting the Customer, Debtor's Counsel and Office of the Clerk with noticing and claims handling and (b) assisting Customer with the compilation, administration, evaluation and production of documents and information as requested. At Customer's, Counsel's or the Clerk's Office's direction, as the case may be, and in accordance with any court orders or rules in the bankruptcy case(s) (including any court order authorizing BMC's engagement), BMC will (1) prepare and serve those notices required in the bankruptcy case(s); (2) receive, record and maintain copies of all proofs of claim and proofs of interest filed in the bankruptcy case(s); (3) create and maintain the official claims register(s); (4) receive and record all transfers of claims pursuant to Bankruptcy Rule 3001(e); (5) maintain an up-to-date mailing list for all entities who have filed proofs of claim and/or requests for notices in the bankruptcy case(s); (6) assist Customer and Counsel with the administrative management, reconciliation and resolution of claims; (7) mail and tabulate ballots for purposes of plan voting; (8) assist with the preparation and maintenance of Customer's Schedules of Assets and Liabilities, Statements of Financial Affairs and other master lists and databases of creditors, assets and liabilities, (9) assist with the production of reports, exhibits and schedules of information for use by the Customer, Counsel or to be delivered to the Court, the Clerk's Office, the U.S. Trustee or third parties; (10) provide other technical and document management services of a similar nature requested by the Customer or the Clerk's office; (11) facilitate or perform distributions; (12) maintain a Customer call center; and (13) set up and maintain a public website.

II. TECHNOLOGY SUPPORT

BMC agrees to provide computer software support and to educate and train Customer in the use of the support software, provide BMC's standard reports as well as consulting and programming support for Customer requested reports, program modifications, data base modification, and/or other features.

III. PRICES, CHARGES AND PAYMENT

- A. BMC agrees to charge, and Customer agrees to pay, BMC's standard prices for its services, expenses and supplies at the rates or prices in effect on the day such services and/or supplies are provided to the Customer, in accordance with the Fee Schedule annexed hereto.
- B. BMC raises its rates from time to time and generally does so each January to reflect changes in the business and economic environment. Such rates shall apply to Customer only to the extent agreed in writing by both parties.
- C. Customer agrees to pay BMC for reasonable out-of-pocket expenses for transportation, lodging, meals and related items, subject to Customer's written approval, which shall be deemed granted upon BMC's receipt of payment.

- D. In connection with noticing services, for good cause and with advance notice to Customer, BMC may request and, in such event, Customer agrees to prepay, BMC estimated postage amounts with respect to each notice or shall authorize BMC to cause the courier's charges (such as UPS or FedEx) to be stated to Customer's own account with such courier, provided BMC provides reasonable documentation for such charges.
- E. BMC agrees to invoice Customer for fees and expenses and Customer agrees that the amount invoiced is due and payable within 30 days of its receipt of the invoice. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, Customer further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) interest on the amount unpaid, accruing from the invoice date. In the case of a dispute in the invoice amount, notice shall be given to BMC within twenty (20) days of receipt of the invoice by Customer. The balance of the invoice amount is due and payable in the normal course.
- F. BMC will look only to the Customer for payment of invoices and in no event shall Counsel be liable for any of BMC's invoices in connection with this Agreement.

IV. WARRANTY

The BMC warranty under the Agreement shall be limited to the re-running, at its expense, of any inaccurate reports, provided that such inaccuracies were caused solely as a result of BMC's performance hereunder and provided further that BMC shall receive written notice of such inaccuracies within thirty (30) days of delivery of such report. If said notice is not made to BMC within the prescribed time limit Customer is liable for all charges. Customer agrees that the foregoing constitutes the exclusive remedy available with respect to inaccurate reports.

V. RIGHTS OF OWNERSHIP

- A. The parties understand that the software programs and other similar proprietary materials furnished by BMC pursuant to this Agreement and/or developed by BMC during the course of this Agreement by BMC are the sole property of BMC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, sub-routines, procedural manuals, and documentation. Customer agrees not to copy or permit others to copy for unauthorized use the source code from the support software or any other programs or similar proprietary materials furnished pursuant to this Agreement.
- B. Customer further agrees that any ideas, concepts, know-how or techniques relating to data processing or BMC's performance of its services developed by BMC during the course of this Agreement shall be the exclusive property of BMC.
- C. Upon Customer's request at any time or times while this Agreement is in effect, BMC shall immediately deliver to Customer at Customer's sole expense, any or all of the data, information and records held or controlled by BMC pursuant to this Agreement, in the form requested by Customer. Any information, data and records, in whatever form existing, whether provided to BMC by Customer or developed by BMC for Customer under this Agreement, may be retained by BMC until all amounts due under this Agreement are paid in full, it being understood that neither party asserts rights of ownership in the official claims register or materials filed with BMC as an agent of the court.
- D. Customer shall remain liable for all charges imposed under this Agreement as a result of data or physical media maintained by BMC. BMC shall dispose of the data and media in the manner requested by Customer. Customer agrees to pay BMC for reasonable expenses incurred as a result of the disposition of the data or media. After giving Customer thirty (30) days advance notice, BMC reserves the right to dispose of data or

media maintained by BMC for Customer if Customer has not utilized the services provided herein for a period of at least ninety (90) days or if Customer has not paid all charges due to BMC.

VI. NON-SOLICITATION

Each party agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain staff of the other party during the term of this Agreement, nor for a period of twelve (12) months after termination of this Agreement, unless mutually agreed upon by both parties.

VII. CONFIDENTIALITY

BMC agrees to, and shall cause its servants, agents, employees, licensees, and subcontractors to, safeguard and keep confidential all data, records, information and communications of any sort or form, regardless of whether written, oral, visual or otherwise recorded or transmitted, with respect to Customer, but excluding such data, records, information and communications that exist in the public domain by reason other than a breach of BMC's obligations under this Section VII "Confidentiality" (the "Confidential Information"). BMC will use the Confidential Information only for the benefit of Customer in connection with the provision of services under this Agreement. Customer agrees to, and will cause its servants, agents, employees, licensees, and subcontractors to, keep all information with respect to BMC's system, procedures and software confidential; provided, however, that if either party is required to produce any such information by order of any governmental agency or other regulatory body, it may, upon not less than five (5) business days' written notice to the other party, release the required information. The obligations set forth in this paragraph shall survive termination of this Agreement.

VIII. TERMINATION

- A. This Agreement shall remain in full force and effect until terminated by Customer on twenty (20) days' prior written notice received by BMC, or, by BMC upon thirty (30) days' prior written notice received by the Customer. In the event the Customer files for bankruptcy protection, the Agreement shall not be terminated without 10 day advance written notice to the Clerk of the United States Bankruptcy Court unless the party or parties seeking termination have received the court's authorization to terminate the agreement.
- B. In the event that this Agreement is terminated, regardless of the reason for such termination, BMC shall (i) cooperate with the Clerk of the United States Bankruptcy Court to effect an orderly transition of data and functions and (ii) cooperate with Customer to orderly transfer to Customer or its designee (or destroy, at Customer's direction) data, records, and information in its possession or control and to effect an orderly transition of record-keeping functions. BMC shall provide all necessary staff, services and assistance required for an orderly transfer and transition. Customer agrees to pay for such services in accordance with BMC's then existing prices for such services.

IX. SYSTEM IMPROVEMENTS

BMC's policy is to provide continuous improvements in the quality of service to the Customer. BMC, therefore, reserves the right to make changes in operation procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminals and other equipment and the BMC data center serving the Customer.

X. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

Except with respect to breaches under Section VII "Confidentiality" above, Customer shall indemnify and hold BMC, its officers, employees and agents harmless against any losses, claims, damages, judgments, liabilities and expense (including reasonable counsel fees and expenses) resulting from action taken or permitted by BMC in good faith with due care and without negligence in reliance upon instructions or orders received from Customer as to anything arising in connection with its performance under this Agreement. Except with respect to breaches under Section VII "Confidentiality" above and the foregoing indemnity, BMC shall be without liability to Customer with respect to any performance or non-performance, in accordance with the terms of this Agreement or instructions properly received pursuant hereto, if done in good faith and without negligence or willful or wanton misconduct. Except with respect to breaches under Section VII "Confidentiality" above, in no event shall liability to Customer for any losses or damages, whether direct or indirect, arising out of this Agreement exceed the total amount billed or billable to Customer for the portion of the particular work which gave rise to the loss or damage. Except with respect to breaches under Section VI "Confidentiality", in no event shall either party be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement.

XI. INDEPENDENT CONTRACTORS

Customer and BMC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

XII. NOTICES

All notices in connection with this Agreement shall be given or made upon the respective parties in writing by facsimile and overnight courier and shall be deemed as given, if by facsimile, on the business day immediately following confirmed transmission, or if by courier, on the day it is delivered by such courier to the appropriate address set forth below:

BMC Group, Inc. Attn: Tinamarie Feil 600 First Avenue, Suite 300 Seattle, WA 98104 Telephone (206) 516-3300 Facsimile (206) 516-3304	Heller Ehrman LLP Attn: Peter Benvenuti Telephone Facsimile
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Or to such other address as the party to receive the notice or request so designates by written notice to the other.

XIII. APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the State of Washington and may be modified only by a written instrument duly executed by an authorized representative of Customer and an officer of BMC.

XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and other agreements, oral and written between the parties relating to the subject matter of this Agreement. It is mutually understood and agreed that Customer shall be under no further obligation to BMC for the services to be performed by BMC except as set forth in this Agreement. A waiver by either party of any term or condition of this Agreement in any instance shall not be deemed or construed as a waiver or continuing waiver of such term or condition in the future or of any other term or condition or deemed a modification of this Agreement. The failure or delay of either party in exercising any of its rights under this Agreement shall not constitute a waiver of such rights or a modification of this Agreement. This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all parties. Any assignment forms or work orders hereunder also may be executed in counterpart. A signature received via facsimile shall be deemed an original for all purposes. The Agreement may be modified or altered by written instrument duly executed by both parties. Customer represents that it has the authority to enter into this Agreement, and understands it may be subject to bankruptcy court approval, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. In the event of any conflict between a term of this Agreement and any order of the court exercising jurisdiction over the Customer's bankruptcy case(s), the terms of the order shall govern.

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XV. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned by a party to a wholly owned subsidiary of such party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

BMC Group, Inc. By: <u><i>Tinamarie Feil</i></u> Name: Tinamarie Feil Title: President Date: January 14, 2009	Heller Ehrman By: _____ Name: _____ Title: _____ Date: _____
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1 John D. Fiero (CA Bar No. 136557)
Kenneth H. Brown (CA Bar No. 100396)
2 Miriam Khatiblou (CA Bar No. 178584)
PACHULSKI STANG ZIEHL & JONES LLP
3 150 California Street, 15th Floor
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4 Telephone: 415/263-7000
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5 E-mail: jfiero@pszjlaw.com
6 kbrown@pszjlaw.com

7 Attorneys for Debtor and Debtor in Possession
Heller Ehrman LLP

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9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 In re:
13 Heller Ehrman LLP,
14 Debtor

Case No.: 08-32514
Chapter 11

**DECLARATION OF TINAMARIE FEIL IN
SUPPORT OF DEBTOR'S APPLICATION
FOR ORDER UNDER 28 U.S.C. § 156(c)
AUTHORIZING THE RETENTION OF
BMC GROUP, INC. AS NOTICING,
CLAIMS, BALLOTING AND
ADMINISTRATIVE AGENT**

[NO HEARING REQUIRED]

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20 I, Tinamarie A. Feil, declare as follows:

21 1. I am the President of BMC Group, Inc. ("BMC"), an information management
22 support services company specializing in the administration of large bankruptcy cases with offices
23 located at 444 Nash Street, El Segundo, CA 90245, and I make this declaration on behalf of BMC
24 (the "Declaration"). I submit this Declaration in support of the *Application of Debtor for Order*
25 *under 28 U.S.C. § 156(c) Authorizing the Retention of BMC Group, Inc. as Noticing, Claims,*
26 *Balloting and Administrative Agent* (the "Application"), pursuant to the terms and conditions set
27 forth in the Agreement for Services attached to the Application as Exhibit A (the "Agreement").
28 Except as otherwise noted, I have personal knowledge of the matters set forth herein.

1 2. BMC is one of the country's leading chapter 11 administrators with experience in
2 noticing, claims processing, claims reconciliation and distribution. BMC has substantial experience
3 in the matters upon which it is to be engaged. BMC has acted as official claims agent in several
4 cases in this and other judicial districts including: Dana Corporation, American Commercial Lines,
5 Sea Containers Ltd, ATA Holdings Corp., Exide Technologies, Touch America, Farmland
6 Industries, TWA-American Airlines, Conseco, Inc., WR Grace, Fleming Companies, UHP
7 Healthcare, Musicland Holding Corp., and ATA Airlines, Inc. to name a few.

8 3. The services to be provided by BMC are set forth more fully in the Application and
9 include, among other things, assisting the Debtor's Counsel and Office of the Clerk with noticing
10 and claims handling, and assisting the Debtor with the compilation, administration, evaluation and
11 production of documents and information as requested.

12 4. In connection with BMC's appointment as claims, noticing, balloting and
13 administrative agent, I acknowledge that, among other things: (1) BMC will not consider itself
14 employed by the United States government and shall not seek any compensation from the United
15 States government in its capacity as claims, noticing, balloting and administrative agent in this
16 chapter 11 case; (2) BMC will not be an agent of the United States and will not act on behalf of the
17 United States; and (3) BMC will not employ any past or present employees of the Debtor in
18 connection with its work as the claims, noticing, balloting and administrative agent in this chapter 11
19 case.

20 5. The compensation arrangement provided for in the Agreement is consistent with and
21 typical of arrangements entered into by BMC and other such firms with respect to rendering similar
22 services for clients such as the Debtor.

23 6. The compensation to be provided by the Debtor to BMC for services rendered is set
24 forth in detail in the Agreement. The Debtor propose to pay BMC, in the ordinary course and
25 without need for further notice or order of the Court, its hourly rates in effect from time to time and
26 to reimburse BMC for its expenses according to its customary reimbursement policies. As set forth
27 in the Agreement, BMC's normal hourly rates range from \$25.00 to \$250.00.
28

1 7. BMC has not received any funds from the Debtor in the year prior to the Petition
2 Date. There are no amounts owed to BMC as of the Petition Date.

3 8. There are no arrangements between BMC and any other entity for the sharing of
4 compensation received or to be received in connection with this case, except insofar as such
5 compensation may be shared among BMC's employees.

6 9. To the best of my knowledge and belief, neither I nor BMC holds or represents any
7 interest adverse to the Debtor's estate and BMC will not represent any other entity in connection
8 with this chapter 11 case.

9 10. I have reviewed the definition of "disinterested person" set forth in section 101(14) of
10 the Bankruptcy Code and, based on the information available to me, I believe that BMC is such a
11 "disinterested person."

12 11. I am not related or connected to, and, to the best of my knowledge, no other employee
13 of BMC is related or connected to any United States Bankruptcy Judge or District Judge for the
14 Northern District of California or the United States Trustee for the Northern District of California or
15 to any employee in the offices thereof.

16 12. To the best of my knowledge and belief, and except as described herein, neither I nor
17 BMC nor any officer or director of BMC has any connection or relationship with the Debtor or its
18 directors and officers, the Debtor's creditors, or any other parties-in-interest in this case (or their
19 attorneys or accountants) that would conflict with the scope of BMC's retention or would create any
20 interest adverse to the Debtor's estate, any Official Committee of Unsecured Creditors or any other
21 party-in-interest. BMC has and will continue to represent clients that may be parties-in-interest in
22 this case in matters unrelated to this case and has had and will continue to have relationships in the
23 ordinary course of its business with certain professionals involved in this case in connection with
24 matters unrelated to this case.

25 To the best of my knowledge, after conducting or supervising the investigation described
26 above, I believe that BMC is eligible for employment by the Debtor pursuant to 28 U.S. C. § 156(c)
27 of the Bankruptcy Code.

28 I declare under penalty of perjury that the foregoing is true and correct.

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Executed on this 14th day of January 2009, at El Segundo, California.

/s/ Tinamarie A. Feil
TINAMARIE A. FEIL

1 John D. Fiero (CA Bar No. 136557)
2 Kenneth H. Brown (CA Bar No. 100396)
3 PACHULSKI STANG ZIEHL & JONES LLP
4 150 California Street, 15th Floor
5 San Francisco, California 94111-4500
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11 Attorneys for Debtor and Debtor in Possession Heller
12 Ehrman LLP

13 UNITED STATES BANKRUPTCY COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 In re:
17
18 Heller Ehrman LLP,
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20 Debtor

Case No.: 08-32514
Chapter 11

CERTIFICATE OF SERVICE

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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

I, Hung Phan, am employed in the city and county of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 150 California Street, 15th Floor, San Francisco, California 94111-4500.

On January 27, 2009, I caused to be served the

APPLICATION OF DEBTORS FOR ORDER UNDER 28 U.S.C. § 156(C) AUTHORIZING THE RETENTION OF BMC GROUP, INC., AS NOTICING, CLAIMS, BALLOTING AND ADMINISTRATIVE AGENT

DECLARATION OF TINAMARIE FEIL IN SUPPORT OF DEBTOR'S APPLICATION FOR ORDER UNDER 28 U.S.C. § 156(C) AUTHORIZING THE RETENTION OF BMC GROUP, INC. AS NOTICING, CLAIMS, BALLOTING AND ADMINISTRATIVE AGENT

[PROPOSED] ORDER UNDER 28 U.S.C. § 156(C) AUTHORIZING THE RETENTION OF BMC GROUP, INC. AS NOTICING, CLAIMS, BALLOTING AND ADMINISTRATIVE AGENT

in this action by placing a true and correct copy of said document(s) in sealed envelopes addressed as follows:

Please see attached Service List

(BY EMAIL) I caused to be served the above-described document by email to the parties indicated on the attached service list at the indicated email address.

I declare under penalty of perjury, under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on January 27, 2009, at San Francisco, California.

/s/ Hung Phan
Hung Phan, Legal Assistant

<p>Donna S. Tamanaha, Assistant U.S. Trustee 235 Pine Street, Suite 700 San Francisco, CA 94104 Donna.S.Tamanaha@usdoj.gov</p>	<p>Counsel to BofA David Minnick Leo Crowley Pillsbury Winthrop Shaw Pittman LLP 50 Fremont Street San Francisco, CA 94105-2228 dminnick@pillsburylaw.com Leo.crowley@pillsburylaw.com</p>	<p>Counsel to Citibank Larry Peitzman, Esq. Peitzman, Weg & Kempinsky LLP 10100 Santa Monica Blvd., Suite 1450 Los Angeles, CA 90067 lpeitzman@pwkllp.com</p>
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