

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

In re:

BOOMERANG TUBE, LLC, a Delaware
limited liability company, *et al.*,¹

Debtors.

Chapter 11

Case No. 15-11247 (MFW)

Jointly Administered

Hearing Date: August 11, 2015 at 2:00 p.m.
(prevailing Eastern Time)

Objection Deadline: August 3, 2015 at 4:00 p.m.
(prevailing Eastern Time)

**APPLICATION FOR ORDER AUTHORIZING THE
RETENTION OF BROWN RUDNICK LLP AS CO-COUNSEL
FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF
BOOMERANG TUBE, LLC, NUNC PRO TUNC TO JUNE 19, 2015**

The Official Committee of Unsecured Creditors (the “Committee”) of Boomerang Tube, LLC (“Boomerang”) and its affiliated debtors and debtors-in-possession in the above-captioned Chapter 11 cases (collectively, the “Debtors”), respectfully submits this application (the “Application”) for the entry of an order authorizing the retention of the law firm of Brown Rudnick LLP (“Brown Rudnick”) as co-counsel to the Committee *nunc pro tunc* to June 19, 2015, pursuant to Section 1103(a) of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure and Del. Bankr. LR 2014-1 (the “Bankruptcy Rules”). In support of the Application, the Committee submits the declaration of Steven D. Pohl, Esq. annexed hereto as **Exhibit A** (the “Pohl Declaration”) and respectfully represents as follows:

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Boomerang Tube, LLC (9415); BTCSP, LLC (7632); and BT Financing, Inc. (6671). The location of the Debtors’ corporate headquarters is 14567 North Outer Forty, Suite 500, Chesterfield, Missouri 63017.

JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On June 9, 2015 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors-in-possession pursuant to Bankruptcy Code Sections 1107(a) and 1108.

3. On June 19, 2015, the United States Trustee for the District of Delaware appointed the Committee. *See Notice of Appointment of Creditors’ Committee of Unsecured Creditors* [Docket No. 88]. On the same day, the Committee selected Brown Rudnick LLP and Morris, Nichols, Arsht & Tunnell LLP as its proposed co-counsel, subject to the Court’s approval.

RELIEF REQUESTED

4. Pursuant to this Application, the Committee seeks authority to retain Brown Rudnick as its counsel regarding all matters related to the Debtors’ Chapter 11 cases.

5. The Committee selected Brown Rudnick because of its extensive experience and knowledge of bankruptcy matters, and believes Brown Rudnick is well qualified to represent the Committee in these cases. For example, Brown Rudnick has represented official and unofficial committees and other prominent parties as more fully described in the Pohl Declaration.

BROWN RUDNICK'S ROLE

6. Subject to the direction of the Committee and further order of this Court, the professional services to be rendered by Brown Rudnick to the Committee will include the following:

- a. assisting and advising the Committee in its discussions with the Debtors and other parties in interest regarding the overall administration of these cases;
- b. representing the Committee at hearings to be held before this Court and communicating with the Committee regarding the matters heard and the issues raised as well as the decisions and considerations of this Court;
- c. assisting and advising the Committee in its examination and analysis of the conduct of the Debtors' affairs;
- d. reviewing and analyzing pleadings, orders, schedules, and other documents filed and to be filed with this Court by interested parties in these cases; advising the Committee as to the necessity, propriety, and impact of the foregoing upon these cases; and consenting or objecting to pleadings or orders on behalf of the Committee, as appropriate;
- e. assisting the Committee in preparing such applications, motions, memoranda, proposed orders, and other pleadings as may be required in support of positions taken by the Committee, including all trial preparation as may be necessary;
- f. conferring with the professionals retained by the Debtors and other parties in interest, as well as with such other professionals as may be selected and employed by the Committee;
- g. coordinating the receipt and dissemination of information prepared by and received from the Debtors' professionals, as well as such information as may be received from professionals engaged by the Committee or other parties-in-interest in these cases;
- h. participating in such examinations of the Debtors and other witnesses as may be necessary in order to analyze and determine, among other things, the Debtors' assets and financial condition, whether the Debtors have made any avoidable transfers of property, or whether causes of action exist on behalf of the Debtors' estates;
- i. negotiating and formulating a plan of reorganization for the Debtors; and

- j. assisting the Committee generally in performing such other services as may be desirable or required for the discharge of the Committee's duties pursuant to section 1103 of the Bankruptcy Code.

7. The Committee believes that it is necessary to employ counsel to render the professional services to the Committee as described above so that the Committee may properly fulfill its duties under the Bankruptcy Code. Further, the Committee believes that Brown Rudnick is well qualified to handle the legal work required in these Chapter 11 cases.

BROWN RUDNICK'S CONNECTIONS IN THESE CASES

8. The Committee has reviewed the Pohl Declaration, including all of the "connections" to these cases disclosed therein, as such term is used in Bankruptcy Rule 2014(a).

9. Notwithstanding any such connections, the Committee believes that Brown Rudnick is a disinterested person, and does not hold or represent an interest adverse to the Debtors' estates with respect to the matters for which Brown Rudnick is to be employed, as required by Section 328(c) of the Bankruptcy Code.

10. To the extent that issues arise that would cause the Committee to be adverse to any of Brown Rudnick's clients such that it would not be appropriate for Brown Rudnick to represent the Committee with respect to such matters, the Committee will request that its local bankruptcy co-counsel, Morris, Nichols, Arsht & Tunnell LLP, represent the Committee with respect to those matters.

BROWN RUDNICK COMPENSATION

11. Brown Rudnick proposes to render its services on an hourly fee basis according to its customary hourly rates in effect when the services are rendered. It is anticipated that the primary attorneys who will represent the Committee are Steven D. Pohl (whose current hourly rate is \$1,070), Bennett S. Silverberg (whose current hourly rate is \$885) and Sunni P. Beville

(whose current hourly rate is \$820). Other Brown Rudnick attorneys or paraprofessionals will from time to time provide legal services on behalf of the Committee in connection with the matters herein described. The following hourly rates for Brown Rudnick attorneys and paraprofessionals are currently in effect, but are subject to periodic adjustments: attorney rates are \$415 to \$1,240 per hour and paraprofessional rates are \$285 to \$345 per hour.

12. Brown Rudnick's policy is to request reimbursement of its actual and necessary out-of-pocket expenses incurred in connection with providing legal services. Among other things, Brown Rudnick charges its clients for telephone and telecopier toll and other charges, mail and express mail charges, special or hand delivery charges, photocopying charges, travel expenses, after-hours taxi expenses, expenses for working meals or overtime/after-hours meals, computerized research, and transcript costs. The Committee has been assured that Brown Rudnick will charge the Committee for these expenses at rates consistent with charges made to other Brown Rudnick clients, and subject to the Local Rules, orders of this Court and the guidelines of the U.S. Trustee.

13. Brown Rudnick will maintain detailed records of fees and expenses incurred in connection with the rendering of the legal services described above, in accordance with applicable rules and guidelines.

14. Pursuant to Bankruptcy Code Section 328(a), the Committee may retain counsel pursuant to reasonable terms and conditions. The Committee believes that the hourly rates and expense policies of Brown Rudnick, which are applied to other Brown Rudnick clients, all as specifically described above, constitute fair and reasonable terms and conditions for the retention by the Committee of Brown Rudnick as counsel in accordance with Bankruptcy Code Section 328(a).

15. The Committee has approved Brown Rudnick's budget and staffing plan from the date Brown Rudnick was retained (i.e., June 19, 2015) through July 30, 2015. The budget may be amended as necessary to reflect changed or unanticipated developments.

16. As part of the compensation payable to Brown Rudnick, the Committee agrees that Brown Rudnick shall be indemnified and be entitled to payment from the Debtors' estates, subject to approval by the Court pursuant to 11 U.S.C. §§ 330 and 331, for any fees, costs or expenses, arising out of the successful defense of any fee application by Brown Rudnick in these bankruptcy cases in response to any objection to its fees or expenses in these Chapter 11 cases.

17. On account of its services to the Committee, Brown Rudnick will seek compensation and reimbursement of expenses consistent with the Court's proposed *Order Establishing Procedures for Interim Compensation and Reimbursement of Professionals* (the "Proposed Interim Compensation Order") as and when entered; *provided, however*, that Brown Rudnick will only seek payment of fees in excess of 90% of its allowed fees with the consent of the Committee.

18. Brown Rudnick did not agree to any variations from, or alternatives to, its standard or customary billing arrangements for this engagement, other than as set forth in paragraph 17, above.

19. None of the Brown Rudnick professionals to be included in this engagement vary their rates based on the geographic location of the bankruptcy cases on which they are engaged.

20. The Committee requests that Brown Rudnick be allowed compensation for its services and reimbursement for its expenses in accordance with Bankruptcy Code Sections 330 and 331 and Bankruptcy Rule 2016 upon submission of appropriate applications therefor in

compliance with all applicable orders, rules, and guidelines, subject to the review and approval of this Court.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter the proposed order annexed hereto as **Exhibit B** approving the Committee's *nunc pro tunc* engagement and retention of Brown Rudnick as counsel, effective as of June 19, 2015, and that the Court grant the Committee such other and further relief as it deems just and proper.

Dated: July 20, 2015
New York, New York

Respectfully submitted,

THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR
BOOMERANG TUBE, LLC, *et al.*

By: /s/ Mark DiGirolamo
Name: Mark DiGirolamo
Chairperson of the Committee
For: Nucor Corporation