

United States Bankruptcy Court
District of Delaware



CHIEF JUDGE BRENDAN LINEHAN SHANNON

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February 1, 2016

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Re: In re: New Gulf Resources, LLC, et al.
Case No. 15-12566 (BLS)

Dear Counsel:

By Order dated January 19, 2016 [Docket No. 173], this Court approved the Application For Entry of Order Authorizing the Retention and Employment of Baker Botts L.L.P. as Counsel for the Debtors and Debtors in Possession (the "Application") [Docket No. 54]. In so ruling, the Court deferred consideration of the request for approval of a "Fee Premium," payable in the event of litigation over Baker Botts' fees. The United States Trustee objected to this provision of the retention as violative of the recent Supreme Court ruling in *Baker Botts L.L.P. v. ASARCO LLC*, 135 S. Ct. 2158, 192 L. Ed. 2d 208 (2015). In deferring consideration of that provision, the Court observed that the "ASARCO issue" was fully briefed and pending before at least one other judge of this Court, and that it was my intention to review that ruling (once issued) before addressing the issue in this case.

On January 29, 2016, Judge Walrath issued her Opinion in *Boomerang Tube, Inc.*, Case No. 15-11247 (MFW) [Docket No. 860], in which she held that retention provisions that provide for payment for fee defense litigation run afoul of the binding ruling in *ASARCO* and are not otherwise permitted under §§ 328 and 330. I have carefully considered the Opinion and agree with its holding (including comments contained in Footnote 6 of the Opinion applying its rationale to the retention of debtor's counsel).

To the extent that a further order is necessary to clarify the terms of retention of counsel in this case, I would ask that the parties confer and submit an appropriate order consistent with the foregoing under certification of counsel.

Very truly yours,

Brendan Linehan Shannon
Chief United States Bankruptcy Judge

BLS/jmw