

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

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In re	:	Chapter 11
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BOOMERANG TUBE, LLC, a Delaware limited liability company, <i>et al.</i> ,	:	Case No. 15-11247 (MFW)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
	:	Hearing: August 11, 2015 at 2:00 p.m. (ET)
	:	Obj. Due: August 3, 2015 at 4:00 p.m. (ET)
	x	

**APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
PURSUANT TO 11 U.S.C. §§ 328(A), 504, AND 1103(A); FED. R. BANKR. P. 2014, 2016,
AND 5002; AND DEL. BANKR. L.R. 2014-1 FOR AN ORDER AUTHORIZING
RETENTION AND EMPLOYMENT OF MORRIS, NICHOLS, ARSHT & TUNNELL
LLP AS CO-COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS NUNC PRO TUNC TO JUNE 19, 2015**

The Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtors and debtors-in-possession (the “Debtors”) hereby files this application (the “Application”) for entry of an order authorizing the retention and employment of Morris, Nichols, Arsht & Tunnell LLP (“Morris Nichols”) as co-counsel to the Committee *nunc pro tunc* to June 19, 2015, pursuant to sections 328(a), 504, and 1103(a) of title 11 of the United States Code (as amended, the “Bankruptcy Code”); Rules 2014, 2016, and 5002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”). In support of this Application, the Committee submits the

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.

declaration of Derek C. Abbott, Esquire (the "Abbott Declaration"), attached hereto as **Exhibit A** and incorporated herein by reference, and respectfully states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 328(a), 504, and 1103(a) of the Bankruptcy Code, as supplemented by Bankruptcy Rules 2014, 2016, and 5002, and Local Rule 2014-1.

BACKGROUND

3. On June 9, 2015 (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manages their property as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. On June 19, 2015, the United States Trustee for the District of Delaware (the "U.S. Trustee"), pursuant to section 1102 of the Bankruptcy Code, appointed the following as members of the Committee:

- Nucor Steel
- Daewoo International Corp.
- Cudd Pressure Control, Inc., d/b/a Patterson Tubular Services
- Harry Johnson Welding
- J.B. Fabricating LLC

5. On June 19, 2015, the U.S. Trustee filed the *Notice of Appointment of Committee of Unsecured Creditors* [D.I. 88].

6. On June 19, 2015, the Committee selected Brown Rudnick LLP (“Brown Rudnick”) and Morris Nichols as co-counsel to the Committee.

RELIEF REQUESTED

7. By this Application, the Committee respectfully requests that the Court enter an order, substantially in the form annexed hereto as **Exhibit B**, authorizing the Committee to employ and retain Morris Nichols as its co-counsel in these chapter 11 cases *nunc pro tunc* to June 19, 2015 on the terms set forth in the engagement letter attached to the Abbott Declaration (the “Engagement Letter”).

BASIS FOR RELIEF

8. Pursuant to section 1103(a) of the Bankruptcy Code, a committee appointed under section 1102 of the Bankruptcy Code may, with the Court’s approval, “select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.”

9. Pursuant to section 328(a) of the Bankruptcy Code, a committee may employ or authorize the employment of professionals under section 1103 of the Bankruptcy Code “on any reasonable terms and conditions of employment.”

10. The Committee seeks to retain Morris Nichols as its co-counsel because of the firm’s extensive experience, knowledge, and resources in the fields of, *inter alia*, debtors’ and creditors’ rights and business reorganizations under chapter 11 of the Bankruptcy Code.

11. The Committee also seeks to retain Morris Nichols because of the firm’s expertise, experience, and knowledge practicing before this Court, as well as its proximity to the Court and its ability to respond quickly to emergency hearings and other emergency matters

before the Court. The Committee believes that Morris Nichols' attorneys are well qualified and able to represent it in these chapter 11 cases.

12. The Committee seeks to retain Morris Nichols *nunc pro tunc* to June 19, 2015, because the Committee needed Morris Nichols to begin work immediately to effectively represent the Committee.

SERVICES TO BE PROVIDED BY MORRIS NICHOLS

13. The Committee believes that Morris Nichols' services are necessary to enable it to execute faithfully its statutory duties. This is a complex case which is why, in part, the Committee desires to retain Morris Nichols. Subject to further order of this Court, the Committee anticipates that Morris Nichols may render the following services in these chapter 11 cases:

- a) Advise the Committee with respect to its rights, duties, and powers in these cases;
- b) Assist and advise the Committee in its consultations with the Debtors relative to the administration of these cases;
- c) Assist the Committee in analyzing the claims of the Debtors' creditors in negotiating with such creditors;
- d) Assist with the Committee's investigation of the acts, conduct, assets, liabilities, and financial condition of the Debtors and of the operation of the Debtors' business;
- e) Assist the Committee in its analysis of, and negotiations with, the Debtors or their creditors concerning matters related to, among other things, the terms of a plan or plans of reorganization for the Debtors;
- f) Assist and advise the Committee with respect to its communications with the general creditor body regarding significant matters in these cases;
- g) Assist and counsel the Committee with regard to its organization, the conduct of its business and meetings, the dissemination of information to

its constituency, and such other matters as are reasonably deemed necessary to facilitate the administrative activities of the Committee;

- h) Attend the meetings of the Committee;
- i) Represent the Committee at all hearings and other proceedings;
- j) Review and analyze all applications, orders, statements of operations, and schedules filed with the Court and advise the Committee as to their propriety;
- k) Assist the Committee in preparing pleadings and applications as may be necessary in furtherance of the Committee's interests and objectives; and
- l) Perform such other legal services as may be required and are deemed to be in the interests of the Committee in accordance with the Committee's powers and duties as set forth in the Bankruptcy Code.

14. By separate application, the Committee is requesting that the Court approve the retention of Brown Rudnick as co-counsel for the Committee. Retaining Morris Nichols in these cases as co-counsel is appropriate and will enable the Committee to operate more efficiently, especially given Morris Nichols' specialized knowledge of bankruptcy law and procedures in Delaware. Morris Nichols will work with Brown Rudnick to avoid duplicative efforts and to represent the Debtors' unsecured creditors in an efficient and cost-effective manner.

15. Subject to this Court's approval of the Application, Morris Nichols is willing to serve as the Committee's co-counsel and to perform the services described above.

BANKRUPTCY RULE 2014 DISCLOSURES AND DISINTERESTEDNESS

16. To the best of the Committee's knowledge, information, and belief, and except as set forth herein and in the Abbott Declaration, none of Morris Nichols' partners, counsel, or associates hold or represent any interest adverse to the Debtors' estates or their creditors, and Morris Nichols is a "disinterested person" as defined in section 101(14) of the Bankruptcy Code. Upon information and belief, Morris Nichols does not represent any interest

adverse to the Debtors' estates or the Committee or to the creditors the Committee represents in the matters upon which it has been and is to be engaged.

17. Except as set forth in the Abbott Declaration, Morris Nichols does not, and has not, represented any entity in matters related to these chapter 11 cases.

18. Additionally, Morris Nichols may represent or may have represented certain parties with interests in the Debtors' cases on matters unrelated to their chapter 11 cases. As set forth in the Abbott Declaration, Morris Nichols has conducted, and continues to conduct, research into its relations with the Debtors, their substantial creditors and equity security holders, and other parties interested in these cases. As part of this inquiry, Morris Nichols obtained the names of individuals or entities that may be parties-in-interest in these chapter 11 cases (the "Potential Parties-in-Interest") and attached to the Abbott Declaration as **Schedule 1**). Morris Nichols then entered the names of the Potential Parties-in-Interest into a computer database containing the names of all clients and conflict information concerning the clients of Morris Nichols. This inquiry revealed that certain of the Potential Parties-in-Interest or entities affiliated with and/or related to certain Potential Parties-in-Interest (collectively, the "Client Match Entities"), are current (collectively, the "Current Client Match Entities") or former (collectively, the "Former Client Match Entities") Morris Nichols clients. The list of Current Client Match Entities is listed on **Schedule 2** attached to the Abbott Declaration and the list of Former Client Match Entities is listed on **Schedule 3** attached to the Abbott Declaration. Through the information generated from the above-mentioned computer inquiry, and through follow-up inquiries with Morris Nichols attorneys responsible for certain clients listed as Client Match Entities, Morris Nichols determined that the representation of the Client Match Entities

concerned matters unrelated to these chapter 11 cases, except to the extent otherwise indicated in the Abbott Declaration. Although Morris Nichols values all of its clients, none of the Client Match Entities represent significant financial revenues for Morris Nichols.

19. While Morris Nichols has undertaken, and continues to undertake, efforts to identify connections with the Debtor and other parties-in-interest, it is possible that connections with some parties-in-interest have not yet been identified. Should Morris Nichols, through its continuing efforts or as these cases progress, learn of any new connections of the nature described above, Morris Nichols will so advise the Court.

20. Morris Nichols and certain of its partners, counsel, and associates may have in the past represented, may currently represent, and likely in the future will represent parties-in-interest in the Debtors' cases in connection with matters unrelated to the Debtors and their cases. Furthermore, two individuals who may be employed by the Office of the United States Trustee for the District of Delaware, Dion Wynn (left Morris Nichols on March 31, 2002) or the United States Bankruptcy Court for the District of Delaware, Bonnie Anemone (left Morris Nichols on April 13, 2000), are former employees of Morris Nichols. Rachel L. Werkheiser, the spouse of one of my partners, Gregory W. Werkheiser, who, since August 31, 2009, has served as a judicial law clerk to the Honorable Christopher S. Sontchi, a Bankruptcy Judge in this District.

PROFESSIONAL COMPENSATION

21. The Committee seeks approval of the Engagement Letter, including the limited indemnity provision contained therein, pursuant to sections 328(a) and 1103 of the Bankruptcy Code. Section 328(a) of the Bankruptcy Code makes clear that a committee may

retain, subject to bankruptcy court approval, a professional on a fee basis such as the fee structure proposed by the Committee herein. Accordingly, section 328(a) permits the compensation of professionals, including investment bankers, on flexible terms that reflect the nature of their services and prevailing market conditions for those services.

22. Morris Nichols' requested compensation for professional services rendered to the Committee will be based upon the hours actually expended by each assigned professional at each professional's hourly billing rate. Subject to Court approval in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the orders of this Court, the Committee proposes to compensate Morris Nichols for professional services rendered at its normal and customary hourly rates, plus reimbursement of actual, necessary expenses incurred by Morris Nichols on the Committee's behalf.

23. Morris Nichols' current hourly rates range between \$305 per hour for the most junior associate to \$910 per hour for the most senior partner. The following chart is representative of Morris Nichols' current hourly rates for work of this nature:

Partners	\$565 to \$910
Associates	\$305 to \$525
Paraprofessionals	\$240 to \$300
Case Clerks	\$150

These hourly rates are subject to periodic adjustments to reflect economic and other conditions.

24. Morris Nichols will also seek reimbursement for necessary expenses incurred, which shall include travel, photocopying, delivery service, postage, vendor charges, and other out-of-pocket expenses incurred in providing professional services to the Committee.

25. Morris Nichols intends to apply to the Court for the allowance of compensation for professional services rendered and reimbursement of expenses incurred in

accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

STATEMENT REGARDING U.S. TRUSTEE GUIDELINES

26. Morris Nichols also intends to make every reasonable effort to comply with the U.S. Trustee's requests for additional information and disclosures as set forth in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases, effective as of November 1, 2013* (the "Revised U.S. Trustee Guidelines"), in connection with this Application and subsequent applications for compensation and reimbursement of expenses in these cases.

27. The following is provided in response to the request for additional information set forth in Part D.1. of the Revised U.S. Trustee Guidelines:

Question: Did you agree to any variations from, or alternatives to, your standard or customary billing arrangements for this engagement?

Response: No.

Question: Do any of the professionals included in this engagement vary their rate based on the geographic location of the bankruptcy case?

Response: No.

Question: If you represented the client in the 12 months prepetition, disclose your billing rates and material financial terms for the prepetition engagement, including any adjustments during the 12 months prepetition. If your billing rates and materials financial terms have changed postpetition, explain the difference and the reasons for the difference.

Response: Morris Nichols did not represent the Committee in the 12 months prepetition.

Question: Has your client approved your prospective budget and staffing plan, and, if so, for what budget period?

Response: Yes. For the period from June to July 2015.

NUNC PRO TUNC RETENTION

28. The Committee requests approval of the employment of Morris Nichols *nunc pro tunc* to June 19, 2015. Such relief is warranted by the extraordinary circumstances presented by these cases. The Third Circuit has identified “time pressure to begin service” and absence of prejudice as factors favoring *nunc pro tunc* retention. *See Matter of Arkansas Co.*, 798 F.2d 645, 650 (3d Cir. 1986); *see also In re Indian River Homes, Inc.*, 108 B.R. 46, 52 (D. Del. 1989). The complexity, intense activity, and speed that have characterized these cases has necessitated that Morris Nichols, the Committee’s other professionals, and the Committee focus immediate attention on time-sensitive matters and promptly devote substantial resources to the affairs of the Committee pending submission and approval of this Application.

NOTICE

29. Notice of this Application has been given to: (a) the U.S. Trustee; (b) counsel to the Debtors; (c) the Debtors’ post-petition lenders; and (d) those parties who have requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Committee submits that such notice is due and sufficient under the circumstances and that no other or further notice need be given.

NO PRIOR REQUEST

30. No prior application for the relief sought herein has been made to this or any other court.

WHEREFORE, the Committee respectfully requests that the Court enter an order, in substantially the form attached hereto as **Exhibit B**, (i) granting this Application; (ii)

authorizing the Committee to retain and employ Morris Nichols as its co-counsel, *nunc pro tunc* to June 19, 2015; and (iii) granting such other and further relief as the Court may deem just and proper under the circumstances.

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Dated: July 20, 2015

Respectfully submitted,

THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR
BOOMERANG TUBE, LLC,



Mark DiGirolamo

*Authorized Representative of Nucor Steel
Chair, Official Committee of Unsecured
Creditors in the Chapter 11 Cases of
Boomerang Tube, LLC, et al.*