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May 21, 2004

The Honorable A. Thomas Small
Chief United States Bankruptcy Judge
Eastern District of North Carolina
Post Office Box 2747
Raleigh, North Carolina 27602

Re: Bankruptcy Rule 1019(5)

Dear Judge Small:

This letter is written to you in your capacity as Chairman of the United States Judicial Conference Advisory Committee on Bankruptcy Rules. As an attorney who has from time to time represented Chapter 11 debtors-in-possession, I have been particularly interested in the opinion of the United States Court of Appeals for the Fourth Circuit in *In Re: Equipment Services, Inc.*, 290 F. 3rd 739 (4th Circuit, 2002) which resulted in the United States Supreme Court opinion in *Lamie v. U.S. Trustee*, _____ U.S. ____, 124 S. Ct. 1023 (January 26, 2004). Most interesting was the interplay between the import of the *Lamie* opinion, which indicated that the debtor-in-possession ceased to exist as of the date of conversion, and the provisions of Bankruptcy Rule 1019(5)(A) which require the debtor-in-possession to perform certain functions after the date of conversion.

The significance of the *Lamie* opinion was addressed recently in the United States Bankruptcy Court for the Middle District of North Carolina in a case named *Rainbow Transport Services, Inc.*, in which I had represented the debtor-in-possession. This Chapter 11 case was converted to Chapter 7 on April 13, 2004. In light of the *Lamie* decision, I requested that the Chapter 7 Trustee file an application to retain me as special counsel for the purposes of complying with the provisions of Bankruptcy Rule 1019(5)(A). A copy of the

The Honorable A. Thomas Small
May 21, 2004
Page 2

Trustee's Application is enclosed. On May 19, 2004, Judge Carruthers entered an Order denying the Trustee's Application and determining that upon conversion, the debtor-in-possession ceases to exist. A copy of that Order is also enclosed.

In light of the *Lamie* opinion, as interpreted by Judge Carruthers, it would appear that Bankruptcy Rule 1019(5)(A) should be amended in some manner to deal with the "non-existence" of the debtor-in-possession on those dates when the Rule requires it to file certain reports.

I deeply appreciate your consideration of the issue addressed in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bradford Leggett". The signature is written in a cursive style with a large initial "R" and a stylized "L".

R. Bradford Leggett

RBL/mwk
Enclosures

FILED

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA 27 P 1: 18
WINSTON-SALEM DIVISION

IN RE:)
RAINBOW TRANSPORT SERVICES, INC.,) Case Number B-03-52959C-11W
Debtor.)
_____)

**TRUSTEE'S APPLICATION FOR AUTHORITY TO RETAIN COUNSEL
FOR A SPECIFIED SPECIAL PURPOSE PURSUANT TO THE PROVISIONS
OF § 327(E) OF THE BANKRUPTCY CODE**

Bruce Magers, the duly appointed Chapter 7 Trustee in this case, pursuant to the provisions of § 327(e) of the Bankruptcy Code does herewith request the entry of an order authorizing his employment of R. Bradford Leggett of the law firm Allman Spry Leggett & Crumpler, P.A. for the specified purpose of providing legal assistance and advice with reference to the conversion of the case from Chapter 11 to Chapter 7 and specifically for the purpose of seeing that the provisions of Bankruptcy Rule 1019(5)(A) are complied with. In support of this Application, the Trustee respectfully represents that:

1. The case was initially administered under the provisions of Chapter 11 of the Bankruptcy Code by virtue of the filing of a Voluntary Petition on October 2, 2003.
2. On April 12, 2004, the Debtor-In-Possession filed a Motion pursuant to the provisions of § 1112(a) seeking conversion of the case to a case under Chapter 7. By Order entered on April 13, 2004, the Court converted the case to one under Chapter 7 and provided for the appointment of the Applicant as the Chapter 7 Trustee.

3. When a case is converted from Chapter 11 to Chapter 7, it is essential to the expeditious administration of the assets of the Debtor in the Chapter 7 proceeding that the Chapter 7 Trustee be furnished with all pertinent information relating to the administration of the case while it was pending under Chapter 11. The development of this information is provided for under the provisions of Bankruptcy Rule 1019(5)(A) which directs the "debtor-in-possession" to file a schedule of unpaid debts within fifteen (15) days after conversion and further directs the "debtor-in-possession" to file a final report and account within thirty (30) days after conversion.

4. Although this information is essential to the appropriate administration of the Chapter 7 estate, the recent decision of the United States Supreme Court in Lamie v. United States Trustee, ___ U.S. ___, 124 S.Ct. 1023, 157 L.Ed. 2nd 1024 (January 26, 2004) determined that the attorney for the debtor-in-possession was not entitled to recover compensation from the estate for services rendered post-conversion. In *Lamie*, the bankruptcy court had granted a motion to convert the case to Chapter 7 and had appointed a trustee. The United States Supreme Court then noted:

"This terminated [the Debtor's] status as debtor-in-possession and so terminated [Lamie's] service under Section 327 as an attorney for the debtor-in-possession. Yet [Lamie] continued to provide legal services to...the debtor, even though he did not have the trustee's authorization to do so. He prepared reports detailing debts incurred and property acquired since the initial filing; he amended asset schedules; and he appeared at a hearing on an adversary complaint." 124 S. Ct. at 1030.

Accordingly, the United States Supreme Court has determined that the "debtor-in-possession" ceases to exist upon conversion. The specific provisions of Bankruptcy Rule 1019(5) are not addressed in the opinion of the United States Supreme Court nor does it appear that this

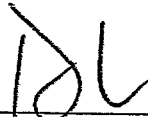
Bankruptcy Rule was cited in briefs tendered to the Supreme Court. The *Lamie* opinion did state the following: "Compensation for debtors' attorneys working on chapter 7 bankruptcies, moreover, is not altogether prohibited. Sections 327 and 330, taken together, allow chapter 7 trustees to engage attorneys, including debtors' counsel, and allow courts to award them fees." 124 S. Ct. at 1032-1033.

5. Here, the Chapter 7 Trustee desires to grant authorization to the attorney for the debtor-in-possession to assist the Applicant for the specific limited purpose of facilitating the conversion of this case from Chapter 11 to a Chapter 7, including, but not limited to assisting in the preparation of the reports required by Bankruptcy Rule 1019(5)(A).

6. The retention of R. Bradford Leggett for this specific purpose is in the best interest of the estate and R. Bradford Leggett does not represent or hold any interest adverse to the Debtor or to the estate with respect to the matters for which he is to be employed. The Affidavit of R. Bradford Leggett is attached hereto, marked Exhibit A and incorporated herein by reference.

WHEREFORE, the Trustee prays that, pursuant to the provisions of § 327(e) of the Bankruptcy Code, he be authorized to employ R. Bradford Leggett as his attorney on a general retainer for the specific purposes as are more particularly described hereinabove, and that he be granted such other and further relief as the Court deems just and proper.

This the 26 day of April, 2004.



Bruce Magers, Trustee

2990 Bethesda Place, Suite 604-C
Winston-Salem, North Carolina 27103
Telephone: (336) 760-1520

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:)
)
RAINBOW TRANSPORT SERVICES, INC.,) Case Number B-03-52959C-11W
)
Debtor.)
_____)

AFFIDAVIT OF R. BRADFORD LEGGETT

R. Bradford Leggett, makes solemn oath that:

1. I am an attorney duly admitted to practice in the State of North Carolina and in this Court, that I maintain an office for the practice of law at Suite 700, 380 Knollwood Street, Winston-Salem, North Carolina 27103.
2. I have served as the attorney for the Debtor-In-Possession during the pendency of the Chapter 11 proceeding for the above-referenced Debtor.
3. Neither I nor my firm have any conflicts of interest with reference to the representation proposed in the Trustee's Application. The undersigned has agreed to accept employment on the terms and conditions as are more particularly set forth in the Trustee's Application.

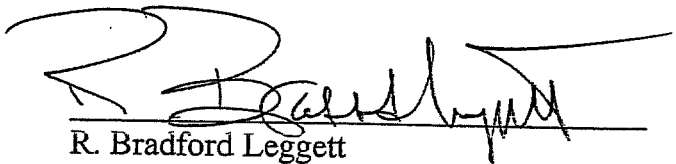
EXHIBIT A, Page 1

4. Neither I nor the firm of Allman Spry Leggett & Crumpler, P.A. has any interest materially adverse to the interest of any of the creditors of the above-referenced Debtor by reason of any direct or indirect relationship to, connection with, or interest in said Debtor.

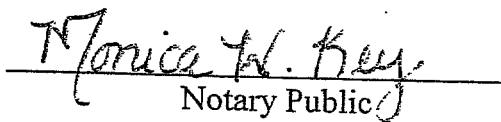
5. Although I am not disinterested by virtue of claims which will be asserted for attorney's fees accruing during the pendency of the Chapter 11, I am qualified for employment as a special counsel for the bankruptcy estate under §327(e) of the Bankruptcy Code.

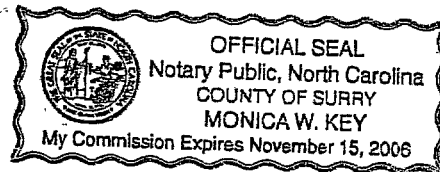
I declare that the foregoing is true and correct to the best of my knowledge and belief.

This the 14th day of April, 2004.


R. Bradford Leggett

Sworn to and subscribed before me
this the 14th day of April, 2004.


Notary Public



My Commission Expires:

11-15-06

EXHIBIT A, Page 2

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this date, he has caused to be served a copy of the **Trustee's Application for Authority to Retain Counsel for a Specified Special Purpose Pursuant to the Provisions of § 327(e) of the Bankruptcy Code** on each of the following by depositing a copy of said document in the United States Mail, first class postage prepaid, addressed as follows:

Michael D. West, Esquire *¹
Bankruptcy Administrator
Post Office Box 1828
Greensboro, NC 27402

Arlie E. Snider, President *
Rainbow Transport Services, Inc.
540 West Independence Boulevard
Mount Airy, NC 27030

Walter W. Pitt, Jr., Esquire *
Bell, Davis & Pitt, P.A.
Post Office Box 21029
Winston-Salem, NC 27120-1029

This the 26 day of April, 2004.



Bruce Magers, Trustee

2990 Bethesda Place, Suite 604-C
Winston-Salem, North Carolina 27103
Telephone: (336) 760-1520

¹ Those entities designated with an asterisk have also been served electronically.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA

ENTERED
MAY 19 2004
U.S. BANKRUPTCY COURT
MDNC - TD

IN RE:

RAINBOW TRANSPORT
SERVICES, INC

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CASE NO. 03-52959

ORDER DENYING APPLICATION BY TRUSTEE TO RETAIN
COUNSEL FOR THE DEBTOR

This matter came on for hearing before the undersigned bankruptcy judge upon the Application by Bruce Magers, Trustee to Retain Attorney for the Debtor and the Objection to the Application filed by BB&T and the Objection of the Bankruptcy Administrator. Appearing before the court was Bruce Magers, the Chapter 7 Trustee, R. Bradford Leggett, counsel for the Debtor, Daniel C. Bruton, counsel for BB&T and Michael D. West, Bankruptcy Administrator.

Factual Background

Rainbow Transport Services filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on October 23, 2003. Pursuant to a motion and order of this Court, the law firm of Allman Spry was retained as counsel for the Debtor in Possession. The Debtor operated as a Debtor in possession until April 13, 2004, when the court ordered that the case be converted from a Chapter 11 case to a Chapter 7 case pursuant to a motion filed by the Debtor in Possession under 11 U.S.C § 1112(a). Bruce Magers is the duly appointed Trustee in the Chapter 7 case. On April 14, 2004, the Court entered an Order directing the debtor to file reports and an accounting dealing with the Debtor's conversion to Chapter 7.

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On April 27, 2004, the Trustee filed an Application for Authority to Retain Counsel pursuant to the provisions of 11 U.S.C §327(e) to provide legal assistance and advice with reference to the conversion of the case from Chapter 11 to Chapter 7, and specifically for the purpose of seeing that the Debtor complied with the provisions of Bankruptcy Rule 1019(5)(A).

The issue before the Court is whether it is proper for the Chapter 7 Trustee to retain counsel for the Debtor to comply with the provisions under Bankruptcy Rule 1019(5)(A). Bankruptcy Rule 1019(5)(A) directs the "debtor in possession" to file a schedule of unpaid debts within fifteen (15) days after conversion and further directs the "debtor in possession" to file a final report and account within thirty (30) days after conversion. All parties agree that upon conversion of the case from a Chapter 11 to a Chapter 7 that the Debtor in Possession ceases to exist.

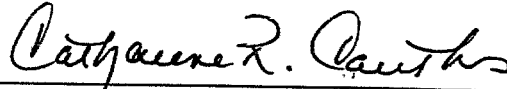
The Supreme Court has made clear in Lamie v U.S. Trustee, ___ U.S. ___, 124 S.Ct 1023 (Jan. 26, 2004) that the attorney for the Chapter 11 debtor cannot receive compensation for services rendered post conversion to a Chapter 7 debtor. The court did indicate that while no such compensation can be sought under §330, the Trustee may, pursuant to §§ 327 and 330, engage attorneys, including Debtor's counsel, and request the court to award them fees. The court finds that employment under § 327, as set forth in the Lamie case, is not applicable to the application that is pending before this court.

When the representation of a debtor in possession is undertaken by counsel in a Chapter 11 case, the counsel takes on certain responsibilities and certain risks. The responsibilities include representing the debtor in possession in such a manner that the Debtor complies with the Federal Rules of Bankruptcy Procedure. The risks assumed by counsel include the risk that there might not be sufficient monies to pay for all of the services rendered. It is improper to have the

Chapter 7 Trustee employ counsel and incur Chapter 7 administrative expenses for services that counsel for the debtor in possession has a duty to perform. Bankruptcy Rule 1019 contemplates that the performance of the duty to file a final report will only come into play in the event of a conversion. If counsel does not choose to complete this task, he or she can always file a motion asking for permission to withdraw from representation. However, it is not appropriate under §327(e) to engage Debtor's counsel to perform duties that are already mandated as an obligation of the debtor in possession.

Based on the foregoing, it is ORDERED, ADJUDGED AND DECREED that the Application of the Trustee to Employ counsel for the Debtor in order to insure compliance with Bankruptcy Rule 1019(5) is denied.

This the 19 day of May 2004.



Catharine R. Carruthers
United States Bankruptcy Judge

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

RECEIVED
6/2/04

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PETER G. McCABE
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EVIDENCE RULES

May 24, 2004

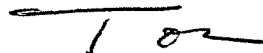
R. Bradford Leggett
Allman Spry Leggett & Crumpler, P.A.
P.O. Drawer 5129
Winston-Salem, NC 27113-5129

Dear Brad:

Thank you for your letter of May 21, 2004, regarding a possible change to Bankruptcy Rule 1019(5). I will see that this is on the agenda of our next meeting on September 9 and 10.

Thank you for calling this to the Committee's attention.

Very truly yours,



A. Thomas Small

ATS:lw

cc: Peter G. McCabe (with attachments)
Professor Jeffrey W. Morris (with attachments)