



Order Filed on October 6, 2021
by Clerk
U.S. Bankruptcy Court
District of New Jersey

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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*Proposed Counsel to the Official Committee
of Unsecured Creditors*

In re:

Aluminum Shapes, L.L.C.,

Aka Shapes LLC fka Delair Aluminum, LLC

Debtor.

Chapter 11

Case No. 21-16520 (JNP)

The Honorable Jerrold N. Poslusny, Jr.

**ORDER APPROVING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS'
AMENDED APPLICATION FOR ENTRY OF AN ORDER UNDER 11 U.S.C. §§ 328
AND 1103 AUTHORIZING THE EMPLOYMENT AND RETENTION OF
BERKELEY RESEARCH GROUP, LLC AS FINANCIAL ADVISOR,
EFFECTIVE AS OF SEPTEMBER 3, 2021**

The relief set forth on the

ORDERED.

DATED: October 6, 2021

A handwritten signature in dark ink, appearing to read "J. Poslusny", is written over a horizontal line.

Honorable Jerrold N. Poslusny, Jr.
United States Bankruptcy Court

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Debtors: ALUMINUM SHAPES, L.L.C.
Case No. 21-16520 (JNP)
Caption of Order: ORDER APPROVING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' AMENDED APPLICATION FOR ENTRY OF AN ORDER UNDER 11 U.S.C. §§ 328 AND 1103 AUTHORIZING THE EMPLOYMENT AND RETENTION OF BERKELEY RESEARCH GROUP, LLC AS FINANCIAL ADVISOR, EFFECTIVE AS OF SEPTEMBER 3, 2021

Upon the application (the “**Application**”) ¹ of the Official Committee of Unsecured Creditors (the “**Committee**”) of Aluminum Shapes, LLC (the “**Debtor**”), for entry of an order, pursuant to Sections 328 and 1103 of the Bankruptcy Code, authorizing the Committee to employ and retain BRG as financial advisor, effective as of September 3, 2021, as more fully set forth in the Application; and upon consideration of the declaration of David Galfus (the “**Galfus Declaration**”); and this Court having jurisdiction to consider the Application pursuant to 28 U.S.C. § 1334; and venue of this chapter 11 case and the Application in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that this Court may enter a final order consistent with Article III of the United States Constitution; and proper and adequate notice of the Application having been given; and this Court being satisfied based on the representations made in the Application and in the Galfus Declaration, together with the representations and deliberations on the record, that the terms and conditions of BRG’s employment, including, but not limited to, the fee structure set forth in the Application and Galfus Declaration, are reasonable as required by Section 328(a) of the Bankruptcy Code; and this Court finding that BRG does not hold or represent interests adverse to the Committee or Debtor’s estate and is a “disinterested person,” as defined in Section 101(14) of the Bankruptcy Code; and this Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and the relief requested in the

¹ Capitalized terms used, but not otherwise defined, herein have the meaning given to them in the Application.

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Application being in the best interests of the Committee, the Debtor, and its estate and creditors; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Application is GRANTED as set forth herein.
2. Pursuant to sections 328 and 1103 of the Bankruptcy Code, the Committee is authorized to retain and employ BRG as financial advisors to the Committee, effective as of the September 3, 2021, pursuant to the terms of the Application and the Galfus Declaration, as modified by this Order.
3. BRG shall file applications for compensation and reimbursement of expenses and shall be compensated in accordance with sections 328, 330 and 331 of the Bankruptcy Code and such Bankruptcy Rules, and Local Rules, as may then be applicable, from time to time, and such other applicable procedures as may be fixed by order of this Court
4. The indemnification provisions set forth in the Application and the Galfus Declaration, as modified herein, are approved, subject, during the pendency of this case, to the following:
 - (a) BRG shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Application and Galfus Declaration, unless the indemnification, contribution, or reimbursement is approved by the Court.
 - (b) Notwithstanding any provision of the Application or Galfus Declaration to the contrary, the Debtor shall have no obligation to indemnify BRG, or provide contribution or reimbursement to BRG, for any claim or expense that is either: (i) judicially determined (the determination having become

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final) to have arisen from BRG's gross negligence, willful misconduct, bad faith or self-dealing, (ii) for a contractual dispute in which the Debtor alleges the breach of BRG's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003), or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by the Court, after notice and a hearing pursuant to subparagraph (c) to be a claim or expense for which BRG should not receive indemnity, contribution, or reimbursement under the terms of the Application and the Galfus Declaration as modified by this Order.

- (c) If, before the earlier of (i) the entry of a final, non-appealable order confirming a chapter 11 plan in this case, and (ii) the entry of an order closing this chapter 11 case, BRG believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution, and/or reimbursement obligations under the application (as modified by this Order), including without limitation the advancement of defense costs, BRG must file an application therefor in this Court, and the Debtor may not pay any such amounts to BRG before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by BRG for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtor's obligation to indemnify BRG. All parties in interest shall retain the right to object to any demand by BRG for indemnification, contribution, or reimbursement.
- (d) Any limitations on any amounts including special damages to be contributed by the parties to the engagement shall be eliminated.

5. Notwithstanding anything to the contrary in the Application or the Galfus Declaration, BRG shall not seek reimbursement of any fees or costs, including attorney fees and costs, arising from the defense of any of BRG's fee applications in the cases. In the event BRG seeks reimbursement for attorneys' fees and expenses, the invoices and supporting time records

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for the attorneys' fees and expenses shall be included in BRG's fee and expense applications, and these invoices and time records shall be in compliance with the Local Bankruptcy Rules and shall be subject to the U.S. Trustee Guidelines and the approval of the Bankruptcy Court pursuant to sections 330 and 331 of the Bankruptcy Code, but without regard to whether such attorneys have been retained under section 327 of the Bankruptcy Code, and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code.

6. To the extent BRG seeks to use the services of Contractors in this case to perform services for the Committee, the Committee shall seek the separate retention of any such Contractors.

7. In the event BRG seeks to use any of its affiliates to perform services for the Committee, the Committee shall seek the separate retention of any such affiliates.

8. BRG shall provide ten days' notice to the Debtor, the U.S. Trustee, and the Committee before any increases in the rates set forth in the Application or any agreement entered into in connection with the Committee's retention of BRG are implemented and shall file such notice with the Court, provided, however, that in the event that the BRG professionals responsible for this matter do not have sufficient advance notice of such rate increases, BRG shall provide notice to the Debtor, the U.S. Trustee, and the Committee as soon as practicable after the information regarding rate increases becomes available to the BRG professionals responsible for this matter.

9. To the extent that there may be any inconsistency between the terms of the Application, the Galfus Declaration, and this Order, the terms of this Order shall govern.

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10. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

11. Any additional services to be provided by BRG which were not provided for in the Application and Galfus Declaration shall require further Court approval.

12. None of the fees payable to BRG shall constitute a “bonus” or fee enhancement under applicable law, except where authorized by this Order.

13. The relief granted herein shall be binding upon any trustee or other successor of the Debtors. The relief granted herein shall also be binding in the event the bankruptcy proceeding is dismissed.

14. The terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

15. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.