

United States Bankruptcy Court
District of Delaware
824 N. Market Street
Wilmington, DE 19801

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February 8, 2016

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RE: Samson Resources Corporation, et al.
Case No.: 15-11934 (CSS)
Docket Nos.: 119, 228, 295 and 399

Dear Counsel:

I am writing in reference to (i) Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in

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Possession Effective *Nunc Pro Tunc* to the Petition Date [D.I. 119] (the “K&E Application”); (ii) Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective *Nunc Pro Tunc* to the Petition Date [D.I. 295] (the “K&E Order”); (iii) Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of Klehr Harrison Harvey Branzburg LLP as Co-Counsel for the Debtors and Debtors in Possession Effective *Nunc Pro Tunc* to the Petition Date [D.I. 228] (the “Klehr Harrison Application”); and (iv) Order Authorizing the Retention and Employment of Klehr Harrison Harvey Branzburg LLP as Co-Counsel for the Debtors and Debtors in Possession Effective *Nunc Pro Tunc* to the Petition Date [D.I. 399] (the “Klehr Harrison Order”).

In both the K&E Application and the Klehr Harrison Application, each applicant sought approval of certain provisions in their respective engagement letter regarding reimbursement of those fees and expenses incurred in connection with participating in, preparing for, or responding to any action, claims, suit, or proceeding brought by or against any third party that relates to the legal services provided under the engagement letter (the “Reimbursement Provisions”). Paragraph 5 of both the K&E Order and the Klehr Harrison Order contain identical language providing that “[n]otwithstanding anything to the contrary herein, this Order shall not approve the . . . Reimbursement Provisions, and the Reimbursement Provisions shall not be effective until further order of this Court. All rights and arguments shall be preserved pending a decision by the Court regarding approval of such provisions.” Both Orders further established a briefing schedule relating to the Reimbursement Provisions and established a hearing date of January 6, 2016, which was subsequently cancelled by the Court.

On January, 29, 2016, Judge Walrath issued an opinion captioned as *In re Boomerang Tube, Inc., et al.*, Case No. 15-11247 (MFW), 2016 WL 385933 (Bankr. D. Del. Jan. 29, 2016). In *Boomerang Tube*, Judge Walrath considered in connection with an application for employment filed by proposed counsel to an official committee of unsecured creditors whether to approve certain provisions that were substantially similar to the Reimbursement Provisions at issue in this case. For several reasons, Judge Walrath denied the request for approval of the requested provisions. This Court agrees with and endorses the reasoning of Judge Walrath in *Boomerang Tube*. Although the application in *Boomerang Tube* was filed by an official committee of unsecured creditors, Judge Walrath ruled that “the Court would reach the same conclusion if the fee defense provisions were in a retention agreement filed by any professional under section 328(a)—including one retained by the debtor. Such provisions are not statutory or

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contractual exceptions to the American Rule and are not reasonable terms of employment of professionals." *Boomerang Tube*, 2016 WL 385933, slip op. at *8 n. 6. The Court finds that the reasoning in *Boomerang Tube* is equally applicable to the K&E Application and the Klehr Harrison Application even though the professionals are being retained as counsel to the debtors and debtors in possession. Thus, the Court will not approve the Reimbursement Provisions sought in the K&E Application and the Klehr Harrison Application.

The Court directs the parties to submit a proposed order under certification of counsel incorporating this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'CS Sontchi', with a long, sweeping horizontal line extending to the right.

Christopher S. Sontchi

CSS/cas