

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

In re:

SPORTCO HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-11299 (LSS)

(Jointly Administered)

**DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE
RETENTION AND EMPLOYMENT OF DIXON HUGHES GOODMAN LLP AS
ACCOUNTANT AND AUDITOR TO THE DEBTORS PURSUANT TO SECTIONS
327(a), 328(a), AND 330 OF THE BANKRUPTCY CODE, BANKRUPTCY RULES
2014(a) AND 2016, AND LOCAL RULES 2014-1 AND 2016-2
NUNC PRO TUNC TO JULY 15, 2019**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) hereby file this application (this “**Application**”) seeking entry of an order (the “**Order**”), substantially in the form attached hereto as **Exhibit A**, authorizing the Debtors’ employment and retention of Dixon Hughes Goodman LLP (“**DHG**”) as their accountant and auditor pursuant to sections 327(a) and 328(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2014-1 and 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), *nunc pro tunc* to July 15, 2019 pursuant to the terms of those engagement letters dated August 17, 2019 and August 21, 2019 by and among the Debtors and DHG (the “**Engagement Letters**”), copies of which are attached as **Exhibit 1** to the Order, and granting related relief. In support of this Application, the Debtors respectfully submit the declaration of

¹ The Debtors, together with the last four digits of each Debtor’s federal tax identification number, are: Bonitz Brothers, Inc. (4441); Ellett Brothers, LLC (7069); Evans Sports, Inc. (2654); Jerry’s Sports, Inc. (4289); Outdoor Sports Headquarters, Inc. (4548); Quality Boxes, Inc. (0287); Simmons Guns Specialties, Inc. (4364); SportCo Holdings, Inc. (0355); and United Sporting Companies, Inc. (5758). The location of the Debtors’ corporate headquarters and the service address for all Debtors is 267 Columbia Ave., Chapin, SC 29036.

D. Joshua Elliott, a Partner of DHG (the “**Elliott Declaration**”), attached hereto as **Exhibit B**. In further support of this Application, the Debtors rely upon and incorporate herein by reference the *Declaration of Bradley P. Johnson in Support of Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”) [Docket No. 9]. In further support of this Application, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Application to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are Bankruptcy Code sections 327(a), 328(a), 330, and 331, Bankruptcy Rules 2014(a) and 2016, and Local Rules 2014-1 and 2016-2.

BACKGROUND

4. On June 10, 2019, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Court. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1.

5. The Debtors continue to operate their businesses (the “**Company**”) and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. On June 17, 2019, an Official Committee of Unsecured Creditors (the “**Unsecured Creditors’ Committee**”) was appointed by the United States Trustee. *See Notice of Appointment of Creditors’ Committee* [Docket No. 58].

7. The factual background regarding the Debtors, including a description of the Debtors’ businesses, capital structure, and the circumstances leading to the filing of these Chapter 11 Cases, is set forth in the First Day Declaration.

RELIEF REQUESTED

8. By this Application, the Debtors seek the entry of an order, pursuant to sections 327(a), 328(a), and 330 of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rules 2014-1 and 2016-2 authorizing the Debtors to retain and employ DHG as their accountant and auditor pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016 and Local Rules 2014-1 and 2016-2, *nunc pro tunc* to the July 15, 2019, pursuant to the terms of the Engagement Letters and granting related relief.

RETENTION OF DHG

9. The Debtors submit this Application because of their need to retain a qualified accountant and auditor to assist them in the critical tasks associated with guiding the Debtors through these Chapter 11 Cases. The Debtors believe that their retention of an accountant and auditor is necessary and appropriate to enable them to preserve and protect the value of the Debtors’ estates and to fulfill their statutory duties.

10. The Debtors have selected DHG as their accountant and auditor due to the firm’s extensive experience in and knowledge of the operations of companies such as the Company as well as DHG’s outstanding reputation as a provider of accounting and audit services.

11. DHG is a leading public accounting firm and provider of accounting, advisory, and tax services with over 2,000 professionals across the United States. Headquartered in

Charlotte, North Carolina, DHG ranks among the top twenty public accounting firms in the nation and offers its services to clients in more than twenty industries across the United States and internationally. DHG has considerable experience providing accounting, advisory, and tax services to businesses in chapter 11, and has been employed in numerous cases under the Bankruptcy Code, such as: *In re City Center Healthcare, LLC d/b/a Hahnemann University Hospital*, Case No. 19-11466-KG (Bankr. D. Del., Aug. 2, 2019); *In re Joerns WoundCo Holdings, Inc.*, Case No. 19-11401-JTD (Bankr. D. Del., July 25, 2019).

12. The Debtors are familiar with the professional standing and reputation of DHG and have selected DHG as their accountant and auditor because DHG can provide the Debtors with the necessary services on a timely basis, as detailed in the Engagement Letters. The Debtors believe DHG is well-qualified and able to represent the Debtors in these Chapter 11 Cases in an efficient and diligent manner.

SCOPE OF SERVICES

13. As set forth more fully in the Engagement Letter and the Elliott Declaration, DHG will provide the following services (the “**Services**”) during the course of these chapter 11 cases:

- a. Preparing tax returns for the Debtors for the years ending December 31, 2017 and December 31, 2018 and for the year ending no later than December 31, 2019, including, without limitation, estimating periodic tax payment calculations for both federal and state obligations for the tax year ending December 31, 2019 beginning with Q3 2019 and calculating additional amounts to be capitalized to inventory under the Uniform Capitalization rules of IRC 263A; (the “**Tax Return Services**”);
- b. Provide routine tax consulting services as may be requested from time to time by the Debtors, including tax research, analysis, consultations, assistance with tax examinations, and other routine tax consulting services, including consulting on tax matters related to the bankruptcy (the “**Tax Consulting Services**,” and together with the Tax Return Services, the “**Tax Services**”); and
- c. Auditing the statements of net assets available for benefits as of December 31, 2018 and for the year ending no later than December 31, 2019, for the

Debtors' 401(k) plan (the "**Plan**") and the related statements of changes in net assets available for benefits for the year and period then ended, and preparing Form 5500s for the related periods (the "**401(k) Audit Services**");

- d. Provide routine audit and plan-related services as may be requested from time to time by the Debtors, including an audit relating to the final distribution of Plan assets, if necessary (the "**Other Plan Services**" and, together with the 401(k) Audit Services, the "**401(k) Services**").

14. The Services are necessary to enable the Debtors to maximize the value of their estates and to comply with reporting obligations. The Debtors believe that the Services would not duplicate the services that other professionals will be providing to the Debtors in connection with these chapter 11 cases. Specifically, DHG would carry out unique functions and use reasonable efforts to coordinate with the Debtors' other retained professionals to avoid the unnecessary duplication of services.

15. Mr. Elliott, a Partner of DHG, will have primary responsibility for providing the Services to the Debtors in these bankruptcy cases.

PROFESSIONAL COMPENSATION

16. The Debtors understand that, with respect to the Services, DHG 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, the Local Rules, and any orders of the Court.

17. With respect to the Tax Return Services, DHG is seeking to be paid pursuant to section 328(a) on a flat fee basis as more fully described below. DHG's fees for the Tax Return Services will be \$45,000 for the tax returns for the Company for the year ending December 31, 2018, and \$45,000 for the tax returns for the Company for the year ending no later than December 31, 2019. Additional state tax returns beyond those listed in Engagement Letters will

be billed at \$1,000 per separate state or local return and \$1,750 per consolidated or unitary return.

18. With respect to the 401(k) Audit Services, DHG is seeking to be paid pursuant to section 328(a) on a flat fee basis as more fully described below. DHG's fees for the 401(k) Audit Services will be \$22,000 for the year ending December 31, 2018, and \$22,000 for the year ending no later than December 31, 2019. If an additional audit is required prior to final distribution of Plan assets, DHG will charge a fee similar to the current flat fee arrangement.

19. Fees for the Tax Consulting Services and the Other Plan Services will be billed at DHG's standard hourly rates in force at the time of service for the personnel performing the services. An example of DHG's customary hourly rates are as set forth in the schedule below.

Title	Rate Per Hour
Partner	\$ 560
Senior Manager	\$ 425
Manager	\$ 325
Senior Associate	\$ 250
Associate	\$ 200

20. In addition to the reimbursement arrangements described above, the Debtors and DHG have agreed that the Debtors shall reimburse DHG for its reasonable and documented out-of-pocket expenses incurred in connection with DHG's performance of the Services.

21. As of the date of this Application, DHG does not hold a retainer. Upon entry of an order granting the relief requested in this Application, and subject to authorization by such order, the Debtors will fund a \$26,000 retainer—comprised of \$15,000 for the Tax Services and

\$11,000 for the 401(k) Services—to be held by DHG and applied against future fees and expenses in accordance with the order.

22. DHG has advised the Debtors that, for accounting and audit engagements such as those under the Engagement Letters, it is not DHG's general practice to keep detailed time records similar to those customarily maintained by attorneys or restructuring professionals. Accordingly, the Debtors request that the Court modify certain of the requirements established by the Local Rule 2016-2 such that DHG professionals shall not be required to keep contemporaneous time records of the services by project category.

23. The Debtors believe that the compensation structure described above and set forth in the Engagement Letters is consistent with the compensation generally charged by accountants and auditors similar to DHG for comparable engagements, both in and out of bankruptcy. Furthermore, the Debtors believe that the compensation structure is consistent with DHG's normal and customary billing practices for cases of comparable size and complexity requiring the level and scope of services to be provided in these chapter 11 cases.

DHG'S DISINTERESTEDNESS

24. To the best of the Debtors' knowledge, information, and belief, other than as set forth in the Elliott Declaration, DHG: (a) has no connection with the Debtors, their creditors, other parties in interest, or the attorneys or accountants of any of the foregoing, or the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") or any person employed by the U.S. Trustee; (b) does not hold any interest adverse to the Debtors' estate; and (c) believes it is a "disinterested person" as defined by section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code.

25. Accordingly, the Debtors believe that DHG is "disinterested" as such term is defined in section 101(14) of the Bankruptcy Code.

26. In addition, as set forth in the Elliott Declaration, if any new material facts or relationships are discovered or arise, DHG will provide the Bankruptcy Court with a supplemental declaration.

BASIS FOR RELIEF

I. The Debtors Should Be Permitted to Retain and Employ DHG on the Terms in the Engagement Letters Pursuant to Sections 327(a), 328(a), and 330 of the Bankruptcy Code

27. Section 327(a) of the Bankruptcy Code authorizes a debtor in possession to employ professionals that “do not hold or represent an interest adverse to the estate, and that are disinterested persons.” 11 U.S.C. § 327(a). As discussed above, DHG satisfies the disinterestedness standard of section 327(a). The Debtors submit that the retention of DHG under the terms described herein is appropriate under section 330 of the Bankruptcy Code.

28. With respect to the Services, section 328(a) of the Bankruptcy Code authorizes the employment of a professional person “on any reasonable terms and conditions of employment” 11 U.S.C. § 328(a). Section 328 permits the compensation of professionals on more flexible terms that reflect the nature of their services and market conditions. As the United States Court of Appeals for the Fifth Circuit has recognized:

Prior to 1978 the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was worth after it had been done. That uncertainty continues under the present §330 of the Bankruptcy Code, which provides that the court award to professional consultants “reasonable compensation” based on relevant factors of time and comparable costs, etc. Under present §328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtor or committee).

In re Nat’l Gypsum Co., 123 F.3d 861, 862 (5th Cir. 1997) (internal citations omitted).

29. Furthermore, under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, certain modifications were made to section 328(a) of the Bankruptcy Code, which now provides as follows:

The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed percentage fee basis, or on a contingent fee basis.

11 U.S.C. § 328(a). Section 328(a) of the Bankruptcy Code, as amended, makes clear that debtors may retain, subject to bankruptcy court approval, professionals on a flat fee basis.

30. As indicated above, notwithstanding their retention pursuant to section 328(a) of the Bankruptcy Code, DHG intends to submit applications for payment of compensation in these chapter 11 cases. With respect to the Tax Return Services and 401(k) Audit Services, DHG intends to apply for allowance of compensation for professional services rendered on a flat fee basis, and with respect to the Tax Consulting Services and Other Plan Services, DHG intends to apply for allowance of compensation for professional services rendered on an hourly basis.

31. DHG also intends to apply for reimbursement of expenses incurred in connection with these chapter 11 cases, subject to the Court's approval and compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, guidelines established by the U.S. Trustee (the "**U.S. Trustee Guidelines**"), and any other applicable procedures and orders of the Court. DHG's rates and corresponding rate structure for these chapter 11 cases are the same as DHG charges generally for accounting and audit services whether in court or otherwise, regardless of whether a fee application is required.

32. The Court's approval of the Debtors' retention of DHG in accordance with the terms and conditions of the Engagement Letters is warranted. As discussed above and in the Elliott Declaration, DHG satisfies the disinterestedness standard in section 327(a) of the

Bankruptcy Code and retention of DHG pursuant to sections 328(a) and 330 of the Bankruptcy Code is appropriate in these circumstances. Additionally, DHG's professional staff has extensive experience and an excellent reputation for providing high-quality services. Further, the Debtors believe that DHG is well qualified to provide the Services to the Debtors in a cost-effective manner.

33. The Debtors, therefore, submit that the terms and conditions of DHG's retention as described herein, including the proposed compensation terms, are reasonable and in keeping with the terms and conditions typical for engagements of this size and character. Given the complexity of the work that must be completed, it is reasonable for the Debtors to seek to employ and retain DHG to serve on the terms and conditions set forth herein.

34. The Debtors request that the requirements of the Bankruptcy Code, the Bankruptcy Rules, Local Rule 2016-2, and the U.S. Trustee Guidelines be tailored to appropriately reflect DHG's engagement and its compensation structure. Specifically, the Debtors request a limited modification of 2016-2's requirements in order to: (a) permit DHG to keep professional time records in summary detail; (b) eliminate DHG's obligation to keep time records on a project category basis; (c) permit DHG to keep professional time records in half-hour (0.5) increments; and (d) allow for the flat-fee structure for the Tax Return Services.

35. Given that the flat-fee structure for the Tax Return Services will likely result in savings to the Debtors' estates, the Debtors submit that cause exists for modification of the requirements.

II. Employment and Retention of DHG Should be Effective *Nunc Pro Tunc* to July 15, 2019.

36. The Debtors also believe that employment of DHG effective *nunc pro tunc* to July 15, 2019 is warranted under the circumstances of these chapter 11 cases. DHG has provided, and

will continue to provide, valuable services to the Debtors. The employment and retention of DHG and its professionals is a sound exercise of the Debtors' business judgment. The Debtors believe that DHG will provide services that benefit the Debtors' estate and creditors. In light of the foregoing, the Debtors believe that retention of DHG and its professionals is appropriate and in the best interests of the Debtors and their estates and creditors.

NOTICE

37. The Debtors have provided notice of this Application to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Unsecured Creditors' Committee; (c) counsel to the Prepetition Term Loan Agent; and (d) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

38. The Debtors have not previously sought the relief requested herein from this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, granting the relief requested herein and granting such other relief as the Court deems just and proper.

Dated: September 10, 2019
Wilmington, Delaware

By: /s/ Dalton Edgecomb
Dalton Edgecomb
Chief Restructuring Officer
SportCo Holdings, Inc.