

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re	)	
	)	
SUFFOLK READY MIX, LLC,	)	Chapter 11
	)	Case No. 09-75473-REG
Debtor.	)	
_____	)	

**AFFIDAVIT OF BRUCE F. SMITH IN SUPPORT OF APPLICATION  
OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
FOR ORDER AUTHORIZING AND APPROVING RETENTION  
AND EMPLOYMENT OF JAGER SMITH P.C. AS COUNSEL**

I, Bruce F. Smith, being duly sworn, hereby depose and say as follows:

1. I am a shareholder in the law firm of Jager Smith P.C. (“Jager Smith”), which maintains offices for the practice of law at One Financial Center, Boston, Massachusetts 02111, and at 485 Madison Avenue, New York, New York 10022. I submit this affidavit (“Affidavit”) on behalf of Jager Smith and in support of the *Application of Official Committee of Unsecured Creditors for Order Authorizing and Approving Retention and Employment of Jager Smith P.C. as Counsel* (the “Application”),<sup>1</sup> pursuant to which the Committee of the Debtor seeks the entry of an order, pursuant to Section 1103 of the Bankruptcy Code, Rule 2014 of the Bankruptcy Rules, and Rule 2014-1 of the Local Bankruptcy Rules, authorizing the retention and employment of Jager Smith, *nunc pro tunc* to August 19, 2009, as counsel for the Committee. Except as otherwise indicated herein, I have personal knowledge of the matters set forth herein and, if called as a witness, would testify competently thereto.

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Application.

***Qualifications of Jager Smith***

2. Jager Smith has substantial experience with complex reorganization cases, having represented debtors, official unsecured creditors' committees, bankruptcy trustees, and other interested parties in numerous cases.

***Jager Smith's Disinterestedness***

3. To the best of my knowledge and information after due inquiry, except as disclosed herein, Jager Smith has no connections with the Debtor or its estate, its creditors or any other interested party herein or their respective attorneys and accountants, the United States Trustee, or any person employed in the Office of the United States Trustee. Also, Jager Smith does not hold, or represent any entity having, an adverse interest in connection with the Debtor's case, except as disclosed herein.

4. Jager Smith maintains a computerized client database (the "Client Database") containing the names of all of Jager Smith's current and former clients. In connection with preparing this Affidavit, I caused to be submitted to, and checked against, the Client Database the names of (i) the Debtor; (ii) the Debtor's single shareholder; (iii) the creditors of the Debtor appearing on the creditor matrix filed with the Court and their attorneys, if known; and (iv) the United States Trustee for the Eastern District of New York and any person known to be employed in the office of the United States Trustee (collectively, the "Potentially Interested Parties").

5. None of the Potentially Interested Parties are current or former clients of Jager Smith.

6. Jager Smith regularly maintains and updates the Client Database in the ordinary course of business. The Client Database is designed to include every matter on which Jager

Smith is now or has been engaged, the entity by which Jager Smith is now or has been engaged, and in each instance, the identities of related parties, adverse parties and the attorneys at Jager Smith who are knowledgeable about the matter. It is Jager Smith's policy that no new matter may be accepted or opened without checking for conflicts. Nevertheless, Jager Smith and certain of its partners, associates, and counsel may have in the past represented, may currently represent, and likely will in the future represent interested parties in connection with matters unrelated to the Debtor or its Case. Moreover, Jager Smith appears in many cases, proceedings, and transactions involving different attorneys, financial consultants, and investment bankers, some of whom may now or in the future represent the Potentially Interested Parties or other interested parties in the Debtor's case. From time to time, Jager Smith will review its disclosures in the Debtor's case and, in the event that additional material connections are discovered, Jager Smith will disclose such information to the Court.

7. I am not related, and to the best of my knowledge, no attorney at Jager Smith is related, to any United States District Judge or United States Bankruptcy Judge in the Eastern District of New York, or to the United States Trustee for such district or any employee in the office thereof.

8. Based on the foregoing and except as is set forth herein, neither I nor any shareholder, partner, associate, or counsel of Jager Smith, insofar as I have been able to determine based on the information currently available to me, represents any interest adverse to the Committee in the matters upon which Jager Smith is to be engaged. To the best of my knowledge, information, and belief, Jager Smith is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code, in that Jager Smith, its shareholders, partners, associates and counsel:

- a. are not creditors, equity security holders or insiders of the Debtor;
- b. are not, and were not, within two years before the date of the filing of the Debtor's *Voluntary Petition*, a director, officer, or employee of the Debtor; and
- c. do not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with or interest in the Debtor, or for any other reason.

### ***Scope of Employment***

9. The professional services that the Committee expects Jager Smith will be called upon to render include, but shall not be limited to, the following:

- a. advising the Committee with respect to its rights, powers, and duties;
- b. representing the Committee at hearings and other proceedings, and in all matters relating to the Debtor's case;
- c. assisting and advising the Committee with respect to its communications with the general creditor body regarding significant matters in the Debtor's case;
- d. preparing applications, motions, orders, objections, and other documents to be filed with the Court with respect to the Debtor's case, and advising the Committee with respect thereto;
- e. performing such other legal services as may be required and are deemed to be in the interests of the Committee in accordance with its powers and duties.

10. Subject to the Court's approval of the Application, Jager Smith has indicated that it is willing to serve as the Committee's counsel to perform, *inter alia*, the services described above.

### ***Compensation for Services Rendered and Reimbursement of Expenses Incurred***

11. Jager Smith intends to apply for compensation for professional services rendered in connection with the Debtor's case subject to the Court's approval and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, orders of this Court, and the rules and procedures that may be fixed by this Court. Jager

Smith will seek to be compensated on an hourly basis in accordance with the ordinary and customary rates which are in effect on the date the services are rendered, plus reimbursement of the actual and necessary expenses Jager Smith incurs.

12. Jager Smith has advised the Committee that the individuals presently designated to represent it are as follows: (i) Bruce F. Smith (partner), whose billing rate is \$525.00 per hour; (ii) Francis G. Conrad (of counsel), whose billing rate is \$540.00 per hour; (iii) Steven C. Reingold (partner), whose billing rate is \$375.00 per hour; (iv) Michael J. Fencer (partner), whose billing rate is \$375.00 per hour; and (v) certain paralegals, the billing rates for whom range from \$125.00 per hour to \$175.00 per hour.<sup>2</sup>

13. The Committee understands that the hourly rates set forth above are subject to periodic adjustment to reflect economic and other conditions.

14. The hourly rates set forth above are Jager Smith's standard hourly rates for work of this nature. These rates are set at a level designed to compensate Jager Smith for its work and to cover fixed and routine overhead expenses. It is Jager Smith's policy to charge its clients in all areas of practice for all other expenses incurred in connection with the client's matters. The expenses charged to clients include, but are not limited to, photocopying, courier and other delivery services, computer-assisted research, docket and court filing fees, telecommunications, travel, court reporting charges, and any other incidental costs advanced by Jager Smith. Jager Smith will charge for these expenses at the rates commonly charged for such costs to other clients of Jager Smith. In addition, Jager Smith intends to seek compensation for all time and expenses associated with its retention as a professional, including the preparation of the

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<sup>2</sup> Attorney Fencer is not a member of the bar of the State of New York or of this Court. Upon approval of the Application, the Committee will seek leave for Attorney Fencer to appear in the Debtor's case *pro hac vice* pursuant to Local Bankruptcy Rule 2090-1(b).

Application, this Affidavit and related documents, as well as any monthly fee statements and interim or final fee applications.

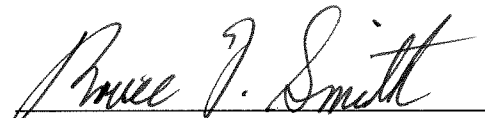
15. Other than as is set forth herein, there is no proposed arrangement to compensate Jager Smith. Jager Smith has not shared nor agreed to share any compensation it has received or may receive with any other party or person, other than with the shareholders, partners, associates and counsel of Jager Smith, or any compensation another person or party has received or may receive.

16. By reason of the foregoing, I believe Jager Smith is eligible for employment and retention by the Committee pursuant to Section 1103 of the Bankruptcy Code and the applicable Bankruptcy Rules and Local Bankruptcy Rules.

Signed under the pains and penalties of perjury this 20th day of August 2009.

JAGER SMITH P.C.

By:



Bruce F. Smith (BS 9582)  
485 Madison Avenue  
New York, New York 10022  
telephone: (212) 683-3520  
facsimile: (617) 951-2414  
email: bsmith@jagersmith.com

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

Hearing Date: September 14, 2009 at 1:30 p.m.  
Objection Deadline: September 9, 2009 at 4:30 p.m.

	)	
In re	)	
	)	
SUFFOLK READY MIX, LLC,	)	Chapter 11
	)	Case No. 09-75473-REG
Debtor.	)	
	)	

**APPLICATION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
FOR ORDER AUTHORIZING AND APPROVING RETENTION  
AND EMPLOYMENT OF JAGER SMITH P.C. AS COUNSEL**

To the Honorable Robert E. Grossman, United States Bankruptcy Judge:

The Official Committee of Unsecured Creditors (the “Committee”) of debtor and debtor-in-possession Suffolk Ready Mix, LLC (the “Debtor”) hereby moves this Court for an order, pursuant to Section 1103 of Title 11 of the United States Code (the “Bankruptcy Code”), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Local Rules for the United States Bankruptcy Court for the Eastern District of New York (the “Local Bankruptcy Rules”), authorizing and approving the retention and employment of the law firm of Jager Smith P.C. (“Jager Smith”) as counsel for the Committee in the above-referenced case. The Committee seeks approval of its retention and employment of Jager Smith *nunc pro tunc* to August 19, 2009, the date on which Jager Smith began rendering services for the Committee.

The facts and circumstances supporting this application (“Application”) are as set forth herein and in the *Affidavit of Bruce F. Smith in Support of Application of Official Committee of Unsecured Creditors for Order Authorizing and Approving Retention and Employment of Jager Smith P.C. as Counsel* (the “Smith Affidavit”) submitted herewith.

In further support of this Application, the Committee respectfully represents as follows:

***Jurisdiction and Venue***

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

2. The statutory predicates for the relief sought herein are Section 1103 of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Bankruptcy Rule 2014-1.

***Background***

3. On July 24, 2009 (the “Petition Date”), the Debtor filed a *Voluntary Petition* for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued in possession of its property and in the management of its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

4. On August 12, 2009, the Office of the United States Trustee for the Eastern District of New York appointed the Committee. On August 17, 2009, the Committee selected Jager Smith to serve as its counsel.

***Relief Requested***

5. The Committee desires to retain and employ Jager Smith as its counsel. The Committee has determined that Jager Smith has the resources and experience necessary to represent it. Specifically, Jager Smith has substantial experience with complex reorganization cases, having represented debtors, official unsecured creditors’ committees, bankruptcy trustees, and other interested parties in numerous cases. Also, Jager Smith maintains an office for the practice of law in New York, where the Debtor’s case is pending. The Committee believes that the retention and employment of Jager Smith is appropriate and necessary.

6. By this Application, the Committee respectfully requests that the Court enter an order authorizing the Committee to employ and retain Jager Smith as its attorneys pursuant to Section 1103 of the Bankruptcy Code.

***Scope of Employment***

7. The professional services that the Committee expects Jager Smith will be called upon to render include, but shall not be limited to, the following:

- a. advising the Committee with respect to its rights, powers, and duties;
- b. representing the Committee at hearings and other proceedings, and in all matters relating to the Debtor's case;
- c. assisting and advising the Committee with respect to its communications with the general creditor body regarding significant matters in the Debtor's case;
- d. preparing applications, motions, orders, objections, and other documents to be filed with the Court with respect to the Debtor's case, and advising the Committee with respect thereto; and
- e. performing such other legal services as may be required and are deemed to be in the interests of the Committee in accordance with its powers and duties.

8. Subject to the Court's approval of this Application, Jager Smith has indicated that it is willing to serve as the Committee's counsel to perform, *inter alia*, the services described above.

***Jager Smith Does Not Hold or Represent Any Adverse Interest***

9. To the best of the Committee's knowledge, based upon the Smith Affidavit and except as is set forth therein, Jager Smith does not hold or represent any interest adverse to the Debtor or its estate, its creditors or any other party in interest, and is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code.

10. Also, to the best of the Committee's knowledge, based upon the Smith Affidavit and except as is set forth therein, the shareholders, partners, counsel, and associates of Jager

Smith do not have any connection with the Debtor or its estate, its creditors or any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the Office of the United States Trustee.

***Compensation for Services Rendered and Reimbursement of Expenses Incurred***

11. Subject to the Court's approval and in accordance with Section 330 of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, orders of this Court, and the rules and procedures that may be fixed by this Court, the Committee requests that Jager Smith be compensated on an hourly basis in accordance with the ordinary and customary rates which are in effect on the date the services are rendered, plus reimbursement of the actual and necessary expenses Jager Smith incurs, including but not limited to photocopying, courier and other delivery services, computer-assisted research, docket and court filing fees, telecommunications, travel, court reporting charges, and any other incidental costs advanced by Jager Smith in the Debtor's case, at the rates commonly charged for such costs to other clients of Jager Smith. In addition, Jager Smith has advised the Committee that it intends to seek compensation for all time and expenses associated with its retention as a professional, including the preparation of this Application, the Smith Affidavit, and related documents, as well as any monthly fee statements and interim or final fee applications.

12. Jager Smith has advised the Committee that the individuals presently designated to represent it are as follows: (i) Bruce F. Smith (partner), whose billing rate is \$525.00 per hour; (ii) Francis G. Conrad (of counsel), whose billing rate is \$540.00 per hour; (iii) Steven C. Reingold (partner), whose billing rate is \$375.00 per hour; (iv) Michael J. Fencer (partner),

whose billing rate is \$375.00 per hour; and (v) certain paralegals, the billing rates for whom range from \$125.00 per hour to \$175.00 per hour.<sup>1</sup>

13. The Committee understands that the hourly rates set forth above are subject to periodic adjustment to reflect economic and other conditions.

14. Other than as is set forth above, there is no proposed arrangement to compensate Jager Smith in connection with its representation of the Committee.

***Request for Approval Nunc Pro Tunc to August 19, 2009***

15. The Committee respectfully requests that Jager Smith's retention be approved *nunc pro tunc* as of August 19, 2009, the date on which Jager Smith commenced providing services on behalf of the Committee, in order to allow Jager Smith to be compensated for the work it has performed and will perform prior to the Court's consideration of this Application. The Committee respectfully submits that under the circumstances, retroactive approval is warranted.

***Waiver of Memorandum of Law***

16. Because this Application does not present any novel issues of law, and because the statutory provisions and authorities relied upon are set forth herein, the Committee respectfully requests that the Court waive the requirement set forth in Local Bankruptcy Rule 9013-1(b) that a separate memorandum of law be filed in support of this Application.

***No Prior Request***

17. No previous request for the relief sought herein has been made to this Court or any other court.

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<sup>1</sup> Attorney Fencer is not a member of the bar of the State of New York or of this Court. Upon the Court's approval of this Application, the Committee will seek leave for Attorney Fencer to appear in the Debtor's case *pro hac vice* pursuant to Local Bankruptcy Rule 2090-1(b).

**WHEREFORE**, based upon the foregoing, the Committee respectfully requests that the Court enter an order, substantially in the form submitted as Exhibit A herewith, authorizing the Committee to retain and employ Jager Smith as its counsel, *nunc pro tunc* to August 19, 2009, and granting to the Committee such other and further relief as the Court deems just and proper.

Signed under the pain and penalties of perjury this 20<sup>th</sup> day of August 2009.

OFFICIAL COMMITTEE OF  
THE UNSECURED CREDITORS

By:

  
\_\_\_\_\_  
Douglas B. Strobel, Credit Manager  
Essex Cement Company

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

	)	
In re	)	
	)	
SUFFOLK READY MIX, LLC,	)	Chapter 11
	)	Case No. 09-75473-REG
Debtor.	)	
	)	

**CERTIFICATE OF SERVICE**

I, Steven C. Reingold, hereby certify that on this 24th day of August, 2009, I caused true copies of the *Application of Official Committee of Unsecured Creditors for Order Authorizing and Approving Retention and Employment of Jager Smith P.C. as Counsel* and *Affidavit of Bruce F. Smith in Support of Application of Official Committee of Unsecured Creditors for Order Authorizing and Approving Retention and Employment of Jager Smith P.C. as Counsel* to be served upon the parties set forth on the attached service list, who do not otherwise receive electronic notice of filing, via first class mail postage prepaid.

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF SUFFOLK READY MIX, LLC

By its proposed attorneys,

/s/ Steven C. Reingold

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Steven C. Reingold (SR 6731)  
Jager Smith P.C.  
485 Madison Avenue  
New York, New York 10022  
telephone: (212) 683-3520  
facsimile: (617) 951-2414  
email: sreingold@jagersmith.com

*In re Suffolk Ready Mix, LLC.*

Case No. 8-09-75473-REG

2002 Service List

Suffolk Ready Mix, LLC  
131 Old Northport Road  
Kings Park, New York 11754  
*Debtor*

Michael G. McAuliffe, Esq.  
Law Offices of Michael G. McAuliffe  
48 South Service Road, Suite 102  
Melville, New York 11747  
*Counsel for the Debtor*

Stan Yang, Esq.  
Office of the United States Trustee  
Long Island Federal Courthouse  
560 Federal Plaza – Room 560  
Central Islip, New York 11722  
*Counsel for the United States Trustee*

Lawrence E. Tofel, Esq.  
Tofel & Partners, LLP  
800 Third Avenue  
New York, New York 10022  
*Counsel for Lafarge North America, Inc.*

Clifford A. Katz, Esq.  
Platzer, Swergold, Karlin, Levine, Goldberg & Jaslow, LLP  
1065 Avenue of the Americas  
New York, New York 10018  
*Counsel for Financial Federal Credit Inc.*

Robert T. Bonsignore, Esq.  
Financial Federal Credit Inc.  
733 Third Ave., 24<sup>th</sup> Floor  
New York, New York 10017  
*Counsel for Financial Federal Credit Inc.*

Josh Russell, Esq., District Tax Attorney  
New York State Department of Taxation & Finance  
400 Oak Street, Suite 102  
Garden City, New York 11530  
*Counsel for New York State Department of Taxation & Finance*

Magdeline D. Coleman, Esq.  
Buchanan Ingersoll & Rooney PC  
620 Eighth Avenue, 23<sup>rd</sup> Floor  
New York, New York 10018  
*Counsel for Caterpillar Financial Services Corporation*

Eli Mattioli, Esq.  
Eunice Rim, Esq.  
K&L Gates LLP  
599 Lexington Avenue  
New York, New York 10022  
*Counsel for Essex Cement Company*

Douglas B. Strobel, Credit Manager  
Essex Cement Company  
P.O. Box 7892  
Richmond, Virginia 23231  
*Official Committee of Unsecured Creditors*

Charles Pillivant, Jr., Credit Manager  
Lafarge North America, Inc.  
c/o Tofel & Partners, LLP  
800 Third Avenue – 12<sup>th</sup> Floor  
New York, New York 10022  
*Official Committee of Unsecured Creditors*

Joseph Sganga, Credit Manager  
Prime Petroleum Corp.  
9 Murray Street  
Farmingdale, New York 11735  
*Official Committee of Unsecured Creditors*