

David M. Friedman (DFriedman@kasowitz.com)
David S. Rosner (DRosner@kasowitz.com)
Andrew K. Glenn (AGlenn@kasowitz.com)
Jeffrey R. Gleit (JGleit@kasowitz.com)
KASOWITZ, BENSON, TORRES & FRIEDMAN LLP
1633 Broadway
New York, New York 10019
Telephone: (212) 506-1700
Facsimile: (212) 506-1800

*Attorneys for Debtors
and Debtors-in-Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

BORDERS GROUP, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 11- _____ ()

(Joint Administration Pending)

**APPLICATION OF THE DEBTORS PURSUANT TO SECTION 327(e)
OF THE BANKRUPTCY CODE AND RULE 2014 OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE FOR AUTHORIZATION
TO EMPLOY AND RETAIN BAKER & MCKENZIE AS DEBTORS' SPECIAL
CORPORATE COUNSEL, *NUNC PRO TUNC* TO THE COMMENCEMENT DATE**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Borders Group, Inc. ("BGI") and its debtor subsidiaries in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors") submit this application (the "Application") pursuant to section 327(e) of title 11 of the United States Code (the "Bankruptcy Code") for authorization to employ, *nunc pro tunc*, Baker & McKenzie LLP ("Baker") as special corporate counsel and respectfully represent:

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Borders Group, Inc. (4588); Borders International Services, Inc. (5075); Borders, Inc. (4285); Borders Direct, LLC (0084); Borders Properties, Inc. (7978); Borders Online, Inc. (8425); Borders Online, LLC (8996); and BGP (UK) Limited.

BACKGROUND

1. On the date hereof (the "Commencement Date"), each of the Debtors commenced a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Contemporaneously herewith, the Debtors filed a motion seeking joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

DEBTORS' BUSINESS

A. Operations

2. The Debtors are a leading operator of book, music and movie superstores and mall-based bookstores. At January 29, 2011, the Debtors operated 642 stores, under the Borders, Waldenbooks, Borders Express and Borders Outlet names, as well as Borders-branded airport stores in the United States, of which 639 stores are located in the United States and 3 in Puerto Rico. Two of Borders' flagship stores (along with other less prominent stores) are located in Manhattan. In addition, the Debtors operate a proprietary e-commerce web site, www.Borders.com, launched in May 2008, which includes both in-store and online e-commerce components.

3. As of February 11, 2011, the Debtors employed a total of approximately 6,100 full-time employees, approximately 11,400 part-time employees, and approximately 600 contingent employees (who are required to work one shift per month, and usually do so at special events), all of whom are located in the United States and Puerto Rico. The Debtors' employees are not subject to any collective bargaining agreements.

B. Financials

4. For the fiscal year ended January 29, 2011, the Debtors recorded net sales of approximately \$2.3 billion. As of December 25, 2010, the Debtors had incurred net year-to-date losses of approximately \$168.2 million.

5. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to these chapter 11 cases is contained in the *Declaration of Scott Henry Pursuant to Local Bankruptcy Rule 1007-2 in Support of First Day Motions* (the "First Day Declaration") filed contemporaneously herewith.

JURISDICTION

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

PRELIMINARY STATEMENT

7. The Debtors seek this Court's authority to retain Baker as the Debtors' special corporate counsel. In support of this Application, the Debtors rely on the Declaration of Craig A. Roeder, a partner at Baker (the "Roeder Declaration"), attached hereto as Exhibit B.

RELIEF REQUESTED

8. The statutory predicates for the relief sought herein are section 327(e) of the Bankruptcy Code, Rule 2014(a) of the Bankruptcy Rules, and Rule 2014-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules").

9. By this Application, the Debtors seek entry of an order, pursuant to section 327(e) of the Bankruptcy Code, authorizing the employment and retention of Baker as special counsel to the Debtors, to perform necessary legal services pertaining to the Debtors' chapter 11 cases (the "Chapter 11 Cases"), effective as of the Commencement Date. The proposed form of order

is attached hereto as Exhibit A. Furthermore, the Debtors request that Baker's retention be made effective *nunc pro tunc* to the Commencement Date to allow the Firm to be compensated for work performed on behalf of the Debtors on or after the Commencement Date, but prior to the Court's consideration, and if the Court is so inclined, approval of this Application. Subject to further Order of this Court, Baker will be retained by the Debtors with respect to represent and advise the Debtors in connection with, among other things, securities law, corporate governance, and equity and debt financing matters as requested by the Debtors (the "Representative Matters").

10. Baker has represented the Debtor in relation to the Representative Matters for more than ten (10) years. The Debtors selected Baker as special counsel for the Representative Matters described above because Baker has extensive knowledge, experience and expertise with such matters. Baker is one of the world's largest law firms with approximately 4,000 attorneys in 69 offices in 40 countries. Baker's knowledge, resources and international reach permit it to deliver high quality legal services throughout the world with fluency, consistency, confidence and sensitivity for cultural, social and legal practice differences outside of the U.S. Baker has extensive expertise in virtually all aspects of the law that may arise in the Representative Matters and these chapter 11 cases, including securities, corporate governance and finance.

11. Further, based upon Baker's experience with the Debtors and ongoing familiarity with the Representative Matters, continued retention of Baker is essential to avoid duplicative and unnecessary expense. Finding substitute counsel would necessarily cause increased expenses as that counsel becomes familiar with the Debtors' businesses, operations, corporate and capital structure, restructuring needs and strategic prospects. As a result, the Debtors believe

that the estate will benefit from continuing representation by Baker on the Representative Matters.

12. The Debtors have been informed that all of Baker's partners, counsel, and associates who may appear before this Court are members in good standing with the bars of the jurisdictions in which they practice. Further, to the extent such lawyers are admitted to the federal District Courts in New York, they are in good standing in those courts.

**BAKER HOLDS NO DISQUALIFYING ADVERSE
INTEREST AND IS DISINTERESTED**

13. To the best of the Debtors' knowledge, and except as may be set forth in the Roeder Declaration, Baker does not represent or hold any interest adverse to the Debtors or their estates with respect to the matters as to which Baker is to be employed. The Debtors have been informed that Baker will conduct an ongoing review of its files to ensure that no disqualifying circumstances arise, and, if any new relevant facts or relationships are discovered, Baker will supplement its disclosure to the Court.

14. Based on the foregoing and the disclosures set forth in the Roeder Declaration, the Debtors submit that Baker does not hold or represent any interest adverse to the Debtors or the Debtors' estates with respect to the matters on which Baker is to be employed.

BAKER WILL NOT CONDUCT THE DEBTORS' BANKRUPTCY CASE

15. By separate applications, the Debtors have sought the Court's approval to retain and employ Kasowitz, Benson, Torres & Friedman LLP ("KBT&F") as the Debtors' general bankruptcy counsel. By contrast, Baker's postpetition work is comprised only of the Representative Matters. None of these matters involves the conduct of the bankruptcy cases themselves. Additionally, because Baker is not serving as the Debtors' bankruptcy counsel, the Debtors believe that Baker has not rendered "services . . . in contemplation of or in connection

with the case” within the meaning of section 329(a) of the Bankruptcy Code. Accordingly, the services rendered and functions to be performed by Baker will not be duplicative of any work performed by KBT&F or any other law firms retained by the Debtors. Furthermore, Baker will coordinate with the Debtors’ other professionals to ensure that its services are, to the maximum extent possible, consistent with and complimentary to other professionals’ services.

PROFESSIONAL COMPENSATION

16. The Debtors understand that Baker intends to apply separately to the Court for allowances of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, all guidelines promulgated by the U.S. Trustee, and all orders of this Court governing professional services performed and expenses incurred after the Commencement Date. To that end, Baker has agreed to submit applications for interim and/or final allowances of compensation pursuant to sections 330 and 331 of the Bankruptcy Code, the rules and orders of this Court and according to the terms of retention applicable in each jurisdiction in which Baker has will be providing services.

17. Baker has further informed the Debtors that the current hourly billing rates for Baker professionals expected to spend significant time on the Representative Matters range from:

<u>Billing Category</u>	<u>Range</u>
US Partners	\$500-\$1,000 per hour
US Of Counsel	\$400-\$700 per hour
US Associates	\$295-\$540 per hour
US Trainees/Paralegals	\$100-\$250 per hour

18. The Debtors respectfully submit that such rates are reasonable and comparable to the rates other firms charge for similar services. Baker & McKenzie’s current hourly rates for associates and partners outside of the United States, depending on the jurisdiction, vary from

\$200 to \$1200. These rates are consistent with hourly rates charged by professionals for similar services in the jurisdictions in which the services are provided.

19. For services rendered by Baker in these cases, the Debtors, subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, all guidelines promulgated by the U.S. Trustee, and orders of the Court, propose to pay Baker its customary hourly rates that are in effect from time to time, for each jurisdiction in which services are provided, as set forth in the Roeder Declaration.

**THE COURT SHOULD GRANT THIS APPLICATION
ON A *NUNC PRO TUNC* BASIS**

20. Prior to filing the Application, Baker has commenced performing services in connection with the Chapter 11 Cases. Baker has and will continue to only perform the services directed by the Debtors. Accordingly, it is appropriate that Baker be retained *nunc pro tunc* to the Commencement Date.


NOTICE

21. No trustee or examiner has been appointed in these chapter 11 cases. The Debtors have served notice of this Motion on: (i) the Office of the United States Trustee for the Southern District of New York (Attn: Tracy Davis, Esq. and Linda Riffkin, Esq.); (ii) those creditors holding the thirty largest unsecured claims against the Debtors' estates; (iii) counsel for the DIP Agents: (x) Morgan, Lewis & Bockius LLP (Attn: Wendy Walker, Esq. and Sandra Vrejan, Esq.), counsel for the Working Capital Agent, (y) Riemer & Braunstein LLP (Attn: Donald E. Rothman, Esq.), counsel for GA Capital LLC; (iv) Kelley Drye & Warren LLP, attorneys for certain landlords (Attn: James S. Carr, Esq., Robert L. LeHane, Esq., and Benjamin D. Feder, Esq.); (v) Lowenstein Sandler PC, attorneys for certain trade vendors (Attn: Kenneth A. Rosen, Esq., Bruce D. Buechler, Esq., Bruce S. Nathan, Esq., and Paul Kizel, Esq.); (vi) Fried, Frank,

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: February 16, 2011
New York, New York

Debtor and Debtor-In-Possession

By: 
Scott Henry, Chief Financial Officer