

BLUE RHINO CORP

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 6/17/1999

Address	104 CAMBRIDGE PLAZA DRIVE WINSTON SALEM, North Carolina 27104
Telephone	336-659-6900
CIK	0001034379
Industry	Retail (Specialty)
Sector	Services
Fiscal Year	07/31

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
Under
The Securities Act of 1933

BLUE RHINO CORPORATION

(Exact name of Registrant as specified in its charter)

Delaware
(State of other jurisdiction of
incorporation or organization)

56-1870472
(I.R.S. Employer
Identification Number)

104 Cambridge Plaza Drive
Winston-Salem, North Carolina 27104
Telephone (336) 659-6900

(Address, Including Zip Code, and Telephone Number, Including Area Code,
of Registrant's Principal Executive Offices)

AMENDED AND RESTATED STOCK OPTION PLAN FOR NON-EMPLOYEE DIRECTORS

(Full Title of the Plan)

Billy D. Prim
Chairman and Chief Executive Officer
104 Cambridge Plaza Drive
Winston-Salem, North Carolina 27104
Telephone (336) 659-6900

(Name, Address, Including Zip Code, and Telephone Number, Including
Area Code, of Agent For Service)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Aggregate Offering Price Per Share(1)	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee
Common Stock, par value \$.001 per share	100,000 Shares	\$16.95	\$1,695,330	\$471.30

(1) Estimated solely for the purpose of calculating the registration fee based upon (i) the average exercise price of \$21.68 for the options to purchase 56,000 shares outstanding on June 17, 1999 plus (ii) the average of the high and low prices of the Common Stock Nasdaq National Market on June 15, 1999 for options to purchase 44,000 shares still to be granted under the plan in accordance with Rule 457(c) and Rule 457(h) under the Securities Act of 1933, as amended.

PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information required by Part I is included in documents sent or given to, or to be sent or given to participants in the Amended and Restated Stock Option Plan for Non-Employee Directors of Blue Rhino Corporation, a Delaware corporation (the "Registrant") pursuant to Rule 428(b) (1).

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The Registrant is subject to the informational and reporting requirements of Sections 13(a), 14 and 15(d) of the Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). The following documents, which are on file with the Commission, are incorporated in this Registration Statement by reference:

- (a) The Registrant's annual report on Form 10-K for the fiscal year ended July 31, 1998 as amended by the Form 10-K/A filed with the Commission on February 16, 1999, amending the Registrant's Form 10-K and the Form 10-K/A-2 filed with the Commission on March 18, 1999 further amending the Registrant's Form 10-K.
- (b) The Registrant's quarterly reports on Form 10-Q for the fiscal quarter ended October 31, 1998 amended by the Form 10-Q/A-1 filed with the Commission on February 16, 1999, for the fiscal quarter ended January 31, 1999 filed with the Commission on March 17, 1999 and for the fiscal quarter ended April 30, 1999 filed with the Commission on June 14, 1999.
- (c) The Registrant's current reports on Form 8-K filed with the Commission on February 26, 1999, March 4, 1999 and May 7, 1999.
- (d) The description of the Registrant's common stock under the caption "Description of Capital Stock" contained in the Registrant's prospectus dated May 18, 1998, filed with the Commission on May 19, 1998 pursuant to Rule 424(b) under the Securities Act of 1933, as amended (the "Securities Act") and deemed to be a part of the Registrant's registration statement on Form S-1 (file number 333-47669).
- (e) All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment which indicates that all shares offered hereby have been sold or which deregisters all shares then remaining unsold, shall be deemed to be incorporated in this Registration Statement by reference and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

John Muehlstein, one of the Registrant's directors, is a partner in the firm of Pedersen & Houpt, P.C., the Registrant's legal counsel.

Peer Pedersen, a Stockholder of the Registrant and the owner of 26% of USA Leasing, L.L.C., an entity affiliated with the Registrant, is a partner in the firm of Pedersen & Houpt, P.C., the Registrant's legal counsel.

Item 6. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law (the "DGCL") authorizes indemnification of directors, officers, employees and agents of the Registrant; allows the advancement of costs of defending against litigation; and permits companies incorporated in Delaware to purchase insurance on behalf of directors, officers, employees and agents against liabilities whether or not in the circumstances such companies would have the power to indemnify against such liabilities under the provisions of the statute. The Registrant's Second Amended and Restated Certificate of Incorporation ("Charter") provides that the Registrant will indemnify its directors and officers to the fullest extent permitted by law.

Under the provisions of the Registrant's Charter, any director or officer who, in his or her capacity as such, is made or threatened to be made a party to any suit or proceeding shall be indemnified if the Board of Directors determines such director or officer acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Registrant or, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The Registrant will not however indemnify any director or officer where such director or officer:

(a) breaches his or her duty of loyalty to the Registrant or its stockholders; (b) fails to act in good faith or engages in intentional misconduct or knowing violation of law; (c) authorizes payment of an unlawful dividend or stock repurchase or redemption; or (d) obtains an improper personal benefit. While liability for monetary damages has been eliminated, equitable remedies such as injunctive relief or rescission remain available. In addition, a director is not relieved of his or her responsibilities under any other law, including the federal securities laws.

Indemnification under the Registrant's Charter and Amended and Restated By-laws ("By-laws") includes payment by the Registrant of expenses in defending an action, suit or proceeding in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by the indemnified party to repay such advance if it is ultimately determined that such person is not entitled to indemnification under the Charter, which undertaking may be accepted without reference to the financial ability of such person that makes such repayments. The Registrant is not responsible for the indemnification of any person seeking indemnification in connection with a proceeding initiated by such person unless the initiation was approved by the Board of Directors of the Registrant. The Charter and the DGCL further provide that such indemnification is not exclusive of any other rights to which such individuals may be entitled under the Charter, the By-laws, any agreement, any vote of stockholders or disinterested directors, or otherwise. The Registrant carries directors and officers insurance covering its executive officers and directors.

Insofar as indemnification by the Registrant for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, the Registrant has been advised that in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

The Exhibit Index immediately preceding the exhibits is attached hereto and incorporated herein by reference.

Item 9. Undertakings

1. The Registrant hereby undertakes:

(a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

(b) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

2. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Winston-Salem, North Carolina, on June 17, 1999.

BLUE RHINO CORPORATION

By: /s/ Billy D Prim

Billy D. Prim
Chairman and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities indicated on June 17, 1999.

Signature	Title
-----	-----
/s/ Billy D. Prim ----- Billy D. Prim	President and Chairman of the Board (Principal Executive Officer)
/s/ Mark Castaneda ----- Mark Castaneda	Secretary and Chief Financial Officer (Principal Financial and Accounting Officer)
/s/ Andrew J. Filipowski ----- Andrew J. Filipowski	Vice Chairman of the Board
/s/ Craig J. Duchossois ----- Craig J. Duchossois	Director
/s/ Steven D. Devick ----- Steven D. Devick	Director
/s/ Richard A. Brenner ----- Richard A. Brenner	Director
/s/ John H. Muehlstein ----- John H. Muehlstein	Director

Exhibits

Exhibit No.	Description of Exhibit
4.1	Second Amended and Restated Certificate of Incorporation of the Registrant incorporated herein by reference to Exhibit 3.1 to the Company's report on Form 10-Q dated July 2, 1998.
4.2	Amended and Restated By-laws of the Registrant incorporated herein by reference to Exhibit 3.2 to the Registration Statement on Form S-1 (File No. 333-47669) of the Registrant as declared effective by the Commission on May 18, 1998.
4.3	Amended and Restated Registration Rights Agreement, dated as of March 1, 1997, among the Registrant, Forsythe/Lunn Technology Partners, L.L.C., Platinum Propane Holding, L.L.C., the Purchasers of Units pursuant to the Unit Purchase Agreement dated October 11, 1995 and the Purchasers of the Registrant's Series A Convertible Participating Preferred Stock incorporated herein by reference to Exhibit 10.15 to the Registration Statement on Form S-1 (File No. 333-47669) of the Registrant as declared effective by the Commission on May 18, 1998.
5.1	Legal Opinion of Pedersen & Houpt, P.C.
23.1	Consent of Pedersen & Houpt, P.C.
23.2	Consent of PricewaterhouseCoopers LLP
24.1	Power of Attorney

EXHIBIT 5.1

LEGAL OPINION OF PEDERSEN & HOUPT, P.C.

(Pedersen & Houpt, P.C. Letterhead)

June 17, 1999

Blue Rhino Corporation
104 Cambridge Plaza Drive
Winston-Salem, North Carolina 27104

Gentlemen:

We have acted as counsel to Blue Rhino Corporation, a Delaware corporation (the "Company"), in connection with the preparation of a Registration Statement on Form S-8 (the "Registration Statement"), which has been filed by the Company with the Securities and Exchange Commission for the purpose of registering under the Securities Act of 1933, as amended (the "Securities Act") and the rules and regulations thereunder the sale of up to 100,000 (the "Shares") of the Company's Common Stock, \$.001 par value per share ("Common Stock") upon the exercise of options granted under the Company's Amended and Restated Stock Option Plan for Non-employee Directors (the "Plan").

Before rendering the opinions hereinafter set forth, we examined, among other things:

1. Registration Statement;
2. The Plan;
3. The Company's Second Amended and Restated Certificate of Incorporation;
4. The Company's Amended and Restated Bylaws;
5. Resolutions of the Company's Board of Directors; and

originals or photostatic or certified copies of all those corporate records of the Company and of all those agreements, communications and other instruments, certificates of public officials, certificates of corporate officials and such other documents as we have deemed relevant and necessary as a

June 17, 1999

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basis for the opinions hereinafter set forth. As to factual matters known to the Company, we have relied without investigation, to the extent we deem such reliance proper, upon certificates or representations made by the Company's duly authorized representatives.

We are members of the Bar of the State of Illinois, and we express no opinion with respect to laws other than the laws of the State of Illinois, the General Corporation Law of the State of Delaware and federal laws of the United States of America.

Based upon the foregoing, and subject to the qualifications and limitations stated herein, we are of the opinion that when (i) the Registration Statement becomes effective under the Securities Act and (ii) the options have been duly exercised pursuant to the terms of the Plan, that the Shares will be validly issued, fully paid and non-assessable.

We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement. In giving this consent, we do not hereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

/s/ Pedersen & Houpt, P.C.

EXHIBIT 23.1

Consent of Pedersen & Hout, P.C.

Pedersen & Hout, P.C. hereby consents to all references made to it in the Registration Statement on Form S-8 for the Amended and Restated Stock Option Plan for Non-employee Directors of Blue Rhino Corporation, as filed with the Securities and Exchange Commission on June 17, 1999.

*/s/ Pedersen & Hout, P.C.
Chicago, Illinois
June 17, 1999*

EXHIBIT 23.2

CONSENT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors and
Shareholders of Blue Rhino Corporation:

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 for the Amended and Restated Stock Option Plan for Non-Employee Directors of our report dated September 22, 1998 (except for the information in Note 21 for which the date is February 8, 1999) relating to the consolidated financial statements, which appears in Blue Rhino Corporation's Annual Report on Form 10-K/A-1 for the year ended July 31, 1998.

/s/ PricewaterhouseCoopers LLP

June 14, 1999

EXHIBIT 24.1

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that each person whose signature appears below constitutes and appoints Billy D. Prim and Mark Castaneda as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, to act, without the other, for him or her and in his or her name, place and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) to this Registration Statement on Form S- 8, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or any of them, or their substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities indicated on June 17, 1999.

Signature -----	Title -----
/s/ Billy D. Prim ----- Billy D. Prim	President and Chairman of the Board (Principal Executive Officer)
/s/ Mark Castaneda ----- Mark Castaneda	Secretary and Chief Financial Officer (Principal Financial and Accounting Officer)
/s/ Andrew J. Filipowski ----- Andrew J. Filipowski	Vice Chairman of the Board
/s/ Craig J. Duchossois ----- Craig J. Duchossois	Director
/s/ Steven D. Devick ----- Steven D. Devick	Director
/s/ Richard A. Brenner ----- Richard A. Brenner	Director
/s/ John H. Muehlstein ----- John H. Muehlstein	Director

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