

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

---

In re:	)	
	)	Chapter 11
	)	
CONEXANT SYSTEMS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 13-10367 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	
	)	<b>Hearing Date: 4/10/13 at 11:30 a.m. (ET) (Requested)</b>
	)	<b>Objection Deadline: 4/10/13 at 4:00 p.m. (ET) (Requested)</b>

---

**DEBTORS’ MOTION FOR ENTRY  
OF AN ORDER AUTHORIZING CONEXANT  
SYSTEMS, INC. TO ENTER INTO A (I) NEW REAL PROPERTY  
LEASE FOR THE DEBTORS’ CORPORATE HEADQUARTERS  
AND (II) LETTER OF CREDIT WITH U.S. BANK RELATED THERETO**

---

Conexant Systems, Inc. (“*Conexant*”) and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*”),<sup>2</sup> respectfully represent:

**Jurisdiction**

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

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: Conexant Systems, Inc. (9439); Conexant CF, LLC (6434); Brooktree Broadband Holding, Inc. (5436); Conexant, Inc. (8218); and Conexant Systems Worldwide, Inc. (0601). The Debtors’ main corporate address is 4000 MacArthur Blvd., Newport Beach, California 92660.

<sup>2</sup> A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the Declaration of Sailesh Chittipeddi, President and CEO of Conexant Systems, Inc., in Support of First Day Pleadings (the “*First Day Declaration*”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”), on February 28, 2013 (the “*Petition Date*”).

3. The bases for the relief requested herein are section 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “*Bankruptcy Code*”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

**Relief Requested**

4. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “*Order*”), authorizing entry into and performance under (a) that certain real property lease between Piedmont Operating Partnership, LP (“*Piedmont*”) and Conexant Systems, Inc., dated March 26, 2013 (the “*New Headquarters Lease*,” a copy of which is annexed as **Exhibit 1 to Exhibit A** attached hereto) and (b) the letter of credit arrangement (the “*Letter of Credit*,” a copy of which is annexed as **Exhibit 2 to Exhibit A**) with U.S. Bank, as contemplated by the terms of the New Headquarters Lease, pursuant to section 363(b) of the Bankruptcy Code.

**Basis for Relief**

**A. Lease Negotiations**

5. As explained in detail in the First Day Declaration, in 2001 the Debtors had 6,900 employees operating out of approximately 2.5 million square feet of commercial space around the world. Nearly all of the Debtors’ operating space, including their current corporate headquarters at 4000 MacArthur Blvd. in Newport Beach, California (the “*Corporate Headquarters Lease*”), is leased pursuant to long-term, non-cancellable operating leases.

6. Between 2001 and 2005, and following a series of business divestitures that became necessary in the face of macroeconomic conditions, the Debtors trimmed their headcount from 6,900 to 2,400 employees. By 2011, the Debtors’ headcount dropped to approximately 500 employees worldwide. The one unfortunate constant for the Debtors, however, has been

continuing obligations under operating leases for vastly more space than current operations require. In fact, as of September 2011, the Debtors maintained 381,763 square feet of impaired space — real estate that is leased but not used by the Debtors. Today, the Debtors sublease approximately 270,000 square feet of this space, with over 110,000 square feet remaining vacant. Since 2011, the Debtors' net payments on "dead leases" has consumed more than twenty percent of their cash on hand.

7. Before the Petition Date, the Debtors and their advisors approached each of the landlords under the Debtors' three major real property master leases in an effort to negotiate resolutions with respect to these burdensome obligations. The Debtors made clear that absent appropriate resolutions, these master leases would need to be rejected or terminated in connection with any chapter 11 case. And on February 28, 2013, following unsuccessful discussions with two of the landlords under the Debtors' master leases, the Debtors filed the *Debtors' Motion for Entry of an Order Authorizing the Rejection of Certain Unexpired Leases, Effective Nunc Pro Tunc to the Petition Date* [Docket No. 18] (the "**Lease Rejection Motion**"), seeking authority to reject two of their real property master leases.

8. With respect to the Corporate Headquarters Lease, the Debtors engaged in discussions with the landlord both before and after the Petition Date. Having secured several sublease arrangements - 48% of the total space under the Corporate Headquarters Lease is occupied by subtenants - the Debtors sought to negotiate a right-sizing of the existing and unoccupied space, which is currently home to all project management, finance and administrative services, human resources and importantly, in-house research and development. More specifically, the Debtors only require 45,000 square feet of the 180,000 square foot space covered by the Corporate Headquarters Lease; the net cost to the Debtors' estates for the unused

portion of the Corporate Headquarters Lease is approximately \$2.3 million per year. At the same time, the Debtors sought to negotiate and obtain a reduction in price, such that the go-forward lease payments would be in line with current market rates.

9. As negotiations with the existing landlord continued, the Debtors concurrently began evaluating other alternatives to ensure that the most cost effective lease would be obtained. And while price was extremely important, the Debtors also spent a significant amount of time analyzing the propriety of moving their corporate headquarters, including the time and cost associated therewith, taking into account the fact that the existing Corporate Headquarters Lease already includes laboratories outfitted specifically for the development of the Debtors' microchips. These efforts produced multiple potential alternatives, including the possibility of re-locating the Debtors' headquarters to 1901 Main St. in Irvine, California. Thus, the Debtors embarked on a process to fully evaluate and negotiate a new lease for their corporate headquarters with Piedmont, while at the same time continuing discussions with the existing landlord in an effort to procure the best arrangement under the circumstances.

10. Following lengthy, arm's-length negotiations with Piedmont, the Debtors reached an agreement that made both economic and operational sense from the standpoint of being able to relocate to the space, in an efficient manner, and accommodate the Debtors' business. Notwithstanding best efforts to renegotiate their Corporate Headquarters Lease, following good faith negotiations, including a final discussion on March 26, 2013 once the terms of the New Headquarters Lease had been finalized, the Debtors and their existing landlord were unable to reach an agreement acceptable to the Debtors.<sup>3</sup>

---

<sup>3</sup> Contemporaneously herewith, the Debtors have filed the *Debtors' Motion For Entry Of An Order Authorizing the Rejection of Their Corporate Headquarters Lease*.

**B. The New Headquarters Lease**

11. In light of the foregoing, the Debtors believe it is in the best interest for Conexant to enter into the New Headquarters Lease. The key terms of the New Headquarters Lease are as follows:<sup>4</sup>

<b>Premises:</b>	Suites 200 and 300 (44,984 square feet; the “ <i>Premises</i> ”), in the building commonly known as 1901 Main Street, Irvine, California 92614 (the “ <i>Building</i> ”).			
<b>Term:</b>	The term of the New Headquarters Lease is 91 months, or approximately 7.5 years. The New Headquarters Lease shall commence upon delivery and Bankruptcy Court approval of the New Headquarters Lease and Letter of Credit and the required certificate of insurance and terminate on November 20, 2020, subject to extension and earlier termination as provided within the terms of the lease. Conexant has two five-year options to extend the lease term at fair market value.			
<b>Base Rent:</b>	<b>Time Period</b>	<b>Monthly Amount</b>	<b>Annual Amount</b>	<b>Monthly Base Rent Per Square Foot</b>
	5/1/13-4/30/14	\$87,718.80 per month	\$1,052,625.60 per year	\$1.95
	5/1/14-4/30/15	\$89,968.00 per month	\$1,079,616.00 per year	\$2.00
	5/1/15-4/30/16	\$92,217.20 per month	\$1,106,606.40 per year	\$2.05
	5/1/16-4/30/17	\$94,466.40 per month	\$1,133,596.80 per year	\$2.10
	5/1/17-4/30/18	\$96,715.60 per month	\$1,160,587.20 per year	\$2.15
	5/1/18-4/30/19	\$98,964.80 per month	\$1,187,577.60 per year	\$2.20
	5/1/19-4/30/20	\$101,214.00 per month	\$1,214,568.00 per year	\$2.25
	5/1/20-11/30/20	\$103,463.20 per month		\$2.30
<b>Abatement Period:</b>	Provided Conexant is not in default under the New Headquarters Lease and further provided Piedmont has received notice of the issuance of a final, non-appealable order in Conexant’s existing chapter 11 cases (and such an order has actually been entered by the Bankruptcy Court in Conexant’s existing chapter 11 cases) either (a) confirming a chapter 11 plan of reorganization for Conexant or (b) granting assignment of the New Headquarters Lease to QP SFM Capital Holdings Limited, an entity managed by Soros Management, LLC (the “ <i>Secured Lender</i> ”) or an affiliate thereof, or to an assignee approved in writing by Piedmont, such approval not to be unreasonably withheld, Conexant’s obligation to pay Base Rent (capped at the rate of \$1.95 per rentable square foot per month) shall be abated for 210 days (the “ <i>Abatement Period</i> ”).			

<sup>4</sup> The following summary is provided for the benefit of the Court and other parties in interest. To the extent of any inconsistency between this summary and the New Headquarters Lease, the New Headquarters Lease shall control.

<b>Operating Expenses:</b>	Commencing May 1, 2014, Conexant is responsible for its share (26.11%) of the Building's Operating Expenses (which were \$12.13 per square foot in 2012); assuming no increases, Conexant's monthly Operating Expense rent will be \$45,471.33. Controllable Operating Expense increases are capped at 4% per year.
<b>Indemnification:</b>	Except to the extent arising from the intentional misconduct or negligent acts of Piedmont or Piedmont's agents or employees, Conexant is to defend, indemnify and hold harmless Piedmont and Piedmont's agents and employees from and against any and all claims, demands, liabilities, damages, judgments, orders, decrees, actions, proceedings, fines, penalties, costs and expenses, including without limitation, court costs and reasonable attorneys' fees arising from or relating to any loss of life, damage or injury to person, property or business occurring in or from the Premises, or caused by or in connection with any violation of the New Headquarters Lease or use of the Premises by, or any other act or omission of, Conexant, any other occupant of the Premises, or any of their respective agents, employees, contractors or guests.
<b>Letter of Credit</b>	<p>As a condition to the effectiveness of the New Headquarters Lease, Conexant shall deliver to Piedmont an unconditional, irrevocable, renewable and transferable Letter of Credit in favor of Piedmont, in the amount of \$1,154,739.00.</p> <p>If:</p> <ul style="list-style-type: none"> <li>A. the term of the Letter of Credit held by Piedmont will expire prior to thirty (30) days following the last day of the term and the Letter of Credit is not extended, or a new Letter of Credit for an extended period of time is not substituted, at least sixty (60) days prior to the expiration of the Letter of Credit;</li> <li>B. Conexant commits a default beyond any applicable notice and cure period, with respect to any provision of the New Headquarters Lease;</li> <li>C. other than with respect to Conexant's existing chapter 11 case, Conexant files a voluntary petition under the Bankruptcy Code or otherwise becomes a debtor in any case or proceeding under the Bankruptcy Code, as now existing or hereinafter amended, or any similar law or statute;</li> <li>D. rather than progress toward approval of (and ultimately achieve approval of) a chapter 11 plan of reorganization in Conexant's existing chapter 11 case, either <ul style="list-style-type: none"> <li>i. Conexant instead pursues a sale process and the successful bidder is neither (x) the Secured Lender or an affiliate thereof nor (y) an assignee approved in writing by Piedmont, such approval not to be unreasonably withheld; or</li> <li>ii. Conexant's existing chapter 11 cases are converted to chapter 7; or Conexant instead pursues a process through the bankruptcy court that effectively liquidates Conexant and in connection with which the New Headquarters Lease is not ultimately assumed by the Secured Lender or an affiliate thereof or an assignee approved in writing by Piedmont (such approval not to be unreasonably withheld); or</li> </ul> </li> <li>E. Conexant does not deliver a substitute Letter of Credit in the event the issuing bank fails to satisfy the required financial criteria (long term rating of less than "A3" (as rated by Moody's Investor Service, A- as rated by Standard &amp; Poor's or Fitch)),</li> </ul> <p>then Piedmont may draw upon all or any portion of the Letter of Credit, and the proceeds received from such draw shall constitute Piedmont's property (and not Conexant's property or the property of the bankruptcy estate of Conexant), and Piedmont may then use, apply or retain all or any part of the proceeds for (1) the payment of any sum that is in default, (2) the payment of any other amount which Piedmont may spend or become obligated to spend by reason of Conexant's default, and/or (3) to compensate Piedmont for any loss or damage which Piedmont may suffer by reason of Conexant's default.</p> <p>Notwithstanding the foregoing, provided no default has occurred and Piedmont has</p>

	<p>received notice of the issuance of a final, non-appealable order in Conexant's existing chapter 11 cases (and such an order has actually been entered by the Bankruptcy Court in Conexant's existing chapter 11 cases) either (a) confirming a chapter 11 plan of reorganization for Conexant or (b) granting assignment of the New Headquarters Lease to the Secured Lender or an affiliate thereof, or to an assignee approved in writing by Piedmont, such approval not to be unreasonably withheld, and provided Conexant has delivered to Piedmont a written request addressed to the issuing bank for Piedmont to acknowledge the foregoing, then Conexant may reduce the amount of the Letter of Credit to \$800,000.00.</p> <p>The Letter of Credit is subject to further reduction as follows: (a) to \$400,000 once Conexant's EBITDA in any 6 month period exceeds \$2,000,000, but not prior to July 1, 2015, and (b) to \$200,000 once Conexant's EBITDA in any 12 month period (which may include the aforementioned 6 month period) exceeds \$5,000,000, but not prior to January 1, 2017.</p>
<b>Subordination:</b>	The Building is not currently encumbered with a loan. The New Headquarters Lease is subordinate to any future loan provided that the lender agrees not to disturb Conexant's right of possession.
<b>Tenant Allowance:</b>	Piedmont is funding a \$25.67 per square foot tenant allowance (\$1,154,349) to do initial tenant improvements to the Premises.

12. In addition to the significant cost savings that the Debtors will realize through entry into the New Headquarters Lease - approximately \$2.8 million of cash savings per year when compared to the existing Corporate Headquarters Lease - the new space affords the Debtors an opportunity to design a customized space and laboratory build-outs from "scratch," increasing the efficiency of the Debtors' business operations, including research and development. Moreover, the Debtors believe the new corporate headquarters will provide Conexant with a true "fresh start," leaving behind the "past," which the Debtors believe will significantly improve the morale of their workforce.

13. As noted above, a condition to the effectiveness of the New Headquarters Lease is the delivery of an unconditional, irrevocable, renewable and transferable letter of credit in the amount of \$1,154,739.00. Moreover, the Debtors are funding the full amount of the Letter of Credit from their cash, to be held by U.S. Bank in a blocked account as collateral and security, and are not seeking any additional credit. The Debtors have consulted with their debtor-in-

possession lender, and their sole secured creditor, and confirmed that entry into the Letter of Credit is permitted under the debtor in possession financing agreement.

#### **Supporting Authority**

14. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . .” 11 U.S.C. § 363(b)(1). The use, sale or lease of property of the estate, other than in the ordinary course of business, is authorized when there is a “sound business purpose” that justifies such action. *See In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval under section 363 of the Bankruptcy Code requires a showing that the proposed action is fair and equitable, in good faith and supported by a good business reason); *see also Institutional Creditors of Cont'l Airlines, Inc. v. Cont'l Airlines, Inc. (In re Cont'l Airlines)*, 780 F.2d 1223, 1225-26 (5th Cir. 1986); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 17-18 (Bankr. M.D. Fla. 2005) (applying sound business justification standard in authorizing payment of prepetition claims pursuant to section 363(b)); *In re Delaware and Hudson Ry. Co.*, 124 B.R. 169, 176 (Bankr. D. Del. 1991) (noting that the Third Circuit has adopted the “sound business judgment” standard for transactions under section 363 of the Bankruptcy Code).

15. The business judgment rule is a “policy of judicial restraint born of the recognition that directors are, in most cases, more qualified to make business decisions than are judges.” *Int'l Ins. Co. v. Johns*, 874 F.2d 1447, 1458 n.20 (11th Cir. 1989). In that regard, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the

debtor's conduct.” See *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted). When a valid business justification exists, the law vests the debtors' decision to use property out of the ordinary course of business with a strong presumption that “in making a business judgment decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” See *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations and internal quotations omitted), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993).

16. When a valid business justification exists, the law vests the debtor’s decision to use property out of the ordinary course of business with a strong presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” See *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993).

17. In the instant case, the Debtors believe that the decision to enter into the New Headquarters Lease and the corresponding Letter of Credit is well within their sound business judgment. The Debtors, in consultation with the Secured Lender (and on notice to counsel for the statutory committee of unsecured creditors appointed in these chapter 11 cases), have extensively and carefully examined their current and prospective space needs and have thoroughly explored available alternatives. The relief requested in this Motion is a result of that process and is well supported by the facts. Thus, moving forward with the New Headquarters

Lease - and rejecting the existing Corporate Headquarters Lease - will afford the Debtors significant go-forward cost savings and is in the best interest of the Debtors' estates. At the same time, the Debtors believe they have thoroughly considered and analyzed their ability to effectively transition to the new headquarters space, and the Debtors are comfortable that operations will continue uninterrupted notwithstanding the potential move.

18. Courts in this jurisdiction have approved relief similar to the relief requested in this motion. *See, e.g., In re SP Newsprint Holdings LLC*, No. 11-13649 (CSS) (Bankr. D. Del. Apr. 6, 2012) (authorizing entry into a postpetition lease agreement); *In re Schutt Sports, Inc.*, No. 10-12795 (KJC) (Bankr. D. Del. Dec. 15, 2010) (authorizing entry into a postpetition warehouse lease); *In re Visteon Corp.*, No. 09-11786 (CSS) (Bankr. D. Del. July 14, 2009) (authorizing entry into certain postpetition lease agreements and related payments of brokerage commissions); *In re Flying J Inc.*, No. 08-13384 (MFW) (Bankr. D. Del. Apr. 2, 2009) (authorizing entry into a postpetition operational agreement and a lease and easement agreement).

19. In light of the foregoing, the Debtors seek authorization to enter into the New Headquarters Lease and the corresponding Letter of Credit.

#### **Notice**

20. The Debtors have provided notice of this motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Official Committee of Unsecured Creditors; (c) counsel to the agents for the Debtors' proposed debtor in possession lenders; (d) counsel to the agent for the Debtors' prepetition secured notes; (e) counsel to the lender for the Debtors' prepetition secured notes; (f) counsel to each of the prepetition equity holders; (g) the Delaware Secretary of State; (h) the Delaware Secretary of Treasury; (i) the Delaware

State Attorney General; (j) the Office of the United States Attorney General for the State of Delaware; (k) the Internal Revenue Service; (l) the Securities and Exchange Commission; and (m) counsel to Piedmont. In light of the nature of the relief requested in this motion, the Debtors respectfully submit that no further notice is necessary.

**No Prior Request**

21. No prior motion for the relief requested herein has been made to this or any other court.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing entry into and performance under the New Headquarters Lease, (b) authorizing entry into and performance under the Letter of Credit, as contemplated by the terms of the New Headquarters Lease and (c) granting such other and further relief as may be appropriate.

Dated: March 28, 2013  
Wilmington, Delaware

*Michael W. Yurkewicz*

---

Domenic E. Pacitti (DE Bar No. 3989)  
Michael W. Yurkewicz (DE Bar No. 4165)  
**KLEHR HARRISON HARVEY  
BRANZBURG LLP**  
919 N. Market Street, Suite 1000  
Wilmington, Delaware 19801  
Telephone: (302) 426-1189  
Facsimile: (302) 426-9193

- and -

Morton Branzburg (admitted *pro hac vice*)  
1835 Market Street, Suite 1400  
Philadelphia, Pennsylvania 19103  
Telephone: (215) 569-2700  
Facsimile: (215) 568-6603

- and -

Paul M. Basta (*pro hac vice* admission pending)  
Joshua A. Sussberg (admitted *pro hac vice*)  
Christopher T. Greco (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

*Proposed Co-Counsel to the Debtors  
and Debtors in Possession*