

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	)	Chapter 11
In re:	)	
	)	Case No. 13-10367 (MFW)
CONEXANT SYSTEMS, INC., <i>et al.</i> , <sup>1</sup>	)	(Jointly Administered)
	)	
Reorganized Debtors.	)	Hearing Date: November 15, 2013 at 2:00 p.m. (EST)
	)	Objection Deadline: November 8, 2013 at 4:00 p.m. (EST)

**LIQUIDATING TRUSTEE’S SECOND OMNIBUS  
(SUBSTANTIVE) OBJECTION TO CERTAIN NO LIABILITY CLAIMS**

The Trustee (the “Liquidating Trustee”) of the Conexant Liquidating Trust (the “Trust”), by and through its undersigned counsel, hereby submits this omnibus objection (the “Second Trust Omnibus Objection”) seeking entry of an order pursuant to sections 105(a) and 502 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”), disallowing in full the claims (the “No Liability Claims”) identified on Exhibit A hereto. An alphabetical index listing all claimants and claim numbers subject to the Second Trust Omnibus Objection is attached as Exhibit B hereto.

In support of this Second Trust Omnibus Objection, the Liquidating Trustee relies on the *Declaration of Stanley Mastil in Support of Liquidating Trustee’s Second Omnibus (Substantive) Objection to Certain No Liability Claims* (the “Mastil Declaration”), filed contemporaneously herewith. In further support of this Second Trust Omnibus Objection, the Liquidating Trustee respectfully represents as follows:

<sup>1</sup> The Debtors in these cases, together 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).

## JURISDICTION

1. This Court has jurisdiction to consider this Second Trust Omnibus Objection pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A), (B) and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 502(b) of the Bankruptcy Code, Bankruptcy Rules 3007 and 9014, and Local Bankruptcy Rule 3007-1.

## BACKGROUND

### **A. The Chapter 11 Cases**

3. On February 28, 2013 (the "Petition Date"), Conexant Systems, Inc. and certain of its affiliates (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. From and after the Petition Date, the Debtors continued to operate as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. An order (the "Confirmation Order")<sup>2</sup> confirming the *Second Modified Joint Plan of Reorganization of Conexant Systems, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan")<sup>3</sup> and approving the Liquidating Trust Agreement and Declaration of Trust (the "Liquidating Trust Agreement")<sup>4</sup> was entered on June 6, 2013. The Plan became effective on July 12, 2013 (the "Effective Date").<sup>5</sup>

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<sup>2</sup> Docket Entry No. 287.

<sup>3</sup> Docket Entry No. 206.

<sup>4</sup> Docket Entry No. 241, Exh. K.

<sup>5</sup> Docket Entry No. 322.

5. On July 12, 2013, the Debtors and the Liquidating Trustee entered into the Liquidating Trust Agreement.<sup>6</sup>

6. The Plan and Confirmation Order provide for the establishment of the Trust as of the Effective Date.<sup>7</sup> Under the Plan and Liquidating Trust Agreement, the Liquidating Trustee has the exclusive right to object on any ground to the allowance of any general unsecured claim filed against the Debtors' estates and is entitled to assert all defenses of the Debtors and their estates.<sup>8</sup> Under Article VII.B of the Plan, the Liquidating Trustee is authorized to settle or compromise any disputed general unsecured claim without notice to or order or approval of the Bankruptcy Court.

7. In addition, the Liquidating Trustee is authorized under Article VII.B of the Plan to administer and adjust the Debtors' official register of claims (the "Claims Register") to reflect settlements and compromises of disputed general unsecured claims without notice to or order or approval of the Bankruptcy Court. Similarly, the Liquidating Trustee has the authority under Article VII.D of the Plan to adjust the Claims Register to reflect any general unsecured claim that has been paid or satisfied, amended or superseded, cancelled or otherwise expunged without having to file a claims objection and without notice to or order or approval of the Bankruptcy Court.

**B. The Schedules and Bar Dates**

8. On March 29, 2013, the Debtors filed their respective schedules of assets and liabilities (the "Schedules").<sup>9</sup>

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<sup>6</sup> Docket Entry No. 287.

<sup>7</sup> See Plan Art. IV.D(3) & Confirmation Order ¶¶ 14-15, 26, 77, 82.

<sup>8</sup> See Plan Art. VI.D(1)(c), Art. VII.B., Confirmation Order ¶¶ 113, 121 & Liquidating Trust Agreement § 3.6.

<sup>9</sup> Docket Entry Nos. 113, 114, 115, 117, 119, 121, and 123.

9. On April 11, 2013, the Court entered the *Order (A) Establishing Bar Dates for Filing Proofs of Claims, Including Claims Under 11 U.S.C. Section 503(b)(9); (B) Approving the Form and Manner for Filing Proofs of Claim; and (C) Approving Notice Thereof*<sup>10</sup> establishing (i) May 17, 2013 as the last date for persons or entities other than governmental units to file proofs of claim, and (ii) August 27, 2013 as the last date for governmental units to file proofs of claim.

**C. The Claims Resolution Process**

10. The Claims Register in this case reflects that as of the date of this Second Trust Omnibus Objection, 168 general unsecured claims have been filed against the Debtors. In addition, the Debtors have scheduled 319 general unsecured claims, which require updating.

11. In accordance with paragraphs 113 and 121 of the Confirmation Order and section 3.6 of the Liquidating Trust Agreement, the Liquidating Trustee is reviewing and reconciling the general unsecured claims, including scheduled claims and the proofs of claim filed in these cases. To that end, the Liquidating Trustee has obtained access pursuant to section 2.5 of the Liquidating Trust Agreement to the books and records maintained by the Debtors that reflect the Debtors' liabilities and the amounts owed to their creditors. The Liquidating Trustee is reviewing the Debtors' books and records and the proofs of claim to determine which general unsecured claims are adequately supported and can be allowed and which general unsecured claims are not adequately supported and should be disputed.

12. The claim reconciliation process is ongoing and includes identifying categories of claims that may be targeted for disallowance, reduction and/or reclassification. As a result of the progress to date in reconciling claims, the Liquidating Trustee anticipates filing

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<sup>10</sup> Docket Entry No. 162.

additional omnibus objections to claims to avoid unwarranted and improper recovery by claimants including possible double recovery. In addition, the Liquidating Trustee anticipates updating and correcting the Claims Register in accordance with Article VII.D of the Plan to reflect claims that have been amended or superseded or that have been paid or satisfied in full or in part, including claims paid after the Petition Date, and will file notices with this Court of such corrections and serve the notices on the claimants affected by the corrections.

### **RELIEF REQUESTED**

13. By this Second Trust Omnibus Objection, for the reasons stated below and on Exhibit A, the Liquidating Trustee objects to the No Liability Claims pursuant to sections 105(a) and 502(b) of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Bankruptcy Rule 3007-1, because those claims are unenforceable against the Debtors. The Liquidating Trustee therefore respectfully requests entry of an order, substantially in the form attached hereto as Exhibit C, sustaining this objection and disallowing the No Liability Claims.

### **OBJECTION**

14. Section 502(a) of the Bankruptcy Code provides, in part, that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). Once an objection to a claim is filed, the Court, after notice and a hearing, shall determine the allowed amount of the claim. 11 U.S.C. § 502(b).

15. While a properly filed proof of claim is *prima facie* evidence of the claim’s allowed amount, when an objecting party presents evidence to rebut a claim’s *prima facie* validity, the claimant bears the burden of proving the claim’s validity by a preponderance of evidence. *See In re Allegheny Int’l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992). The burden of persuasion with respect to the claim is always on the claimant. *See id.* at 174. The failure to

allege facts and to provide sufficient support for a claim deprives the claim of *prima facie* validity. See, e.g., *In re Jorczak*, 314 B.R. 474, 481-82 (Bankr. D. Conn. 2004) (discussing the evidentiary requirements and burden of proof with respect to the allowance of claims).

16. Section 502(b)(1) provides, in part, that a claim is not allowable to the extent that it “is unenforceable against the debtor and property of the debtor, under any agreement or applicable law.” 11 U.S.C. § 502(b). For the reasons stated below and on Exhibit A hereto, each of the No Liability Claims is unenforceable against the Debtors and their property.

17. The Liquidation Trustee reached the conclusion that the No Liability Claims are unenforceable only after careful review and research. The Liquidating Trustee’s professionals thoroughly reviewed the No Liability Claims and any documentation attached to the underlying proofs of claims. They also worked with the Debtors’ accounting personnel to research the Debtors’ books and records for information about the No Liability Claims.

18. Based on its professionals’ review and research, the Liquidating Trustee has determined that the No Liability Claims do not contain information or documentation establishing the validity and amount of the claims and have no basis in the Debtors’ books and records. The Liquidating Trustee has further determined based on that review and research that the No Liability Claims are baseless and should be disallowed.

19. The particular reasons why each No Liability Claim should be disallowed are summarized on Exhibit A hereto.

#### **RESPONSE TO OMNIBUS OBJECTIONS**

20. To contest an objection, a claimant must file and serve a written response to this Second Trust Omnibus Objection (a “Response”) so that it is received no later than

**November 8, 2013 at 4:00 p.m. (Eastern Standard Time)** (the “Response Deadline”). Every Response must be filed with the Office of the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, DE 19801, and served upon the following entity, so that the Response is received no later than the Response Deadline, at the following address:

Kelley Drye & Warren LLP  
101 Park Avenue  
New York, New York 10178  
Attn: James S. Carr, Esq.  
Catherine L. Thompson, Esq.

21. Every response to this Second Trust Omnibus Objection must comply with the requirements of Local Bankruptcy Rule 3007-1 and contain at a minimum the following information:

- a. a caption setting forth the name of the Court, the name of the Debtors, the case number, and the title of objection to which the Response is directed;
- b. the name of the claimant, his/her/its claim number, and a description of the basis for the amount of the Claim;
- c. the specific factual basis and supporting legal argument upon which the party will rely in opposing this Second Trust Omnibus Objection;
- d. any supporting documentation, to the extent it was not included with the Proof of Claim previously filed with the clerk or claims agent, upon which the party will rely to support the basis for and amounts asserted in the Proof of Claim; and
- e. the name, address, telephone number, email address, and fax number of the person(s) (which may be the claimant or the claimant’s legal representative) with whom counsel for the Liquidating Trustee should communicate with respect to the Claim or the Second Trust Omnibus Objection and who possesses authority to reconcile, settle or otherwise resolve the objection to the disputed claim on behalf of the claimant.

22. If a claimant fails to file and serve a timely Response by the above Response Deadline, the Liquidating Trustee will present to the Court an appropriate order

modifying or disallowing such claimant's claim, in the form set forth in Exhibit C hereto, without further notice to the claimant.

**REPLIES TO RESPONSES**

23. In accordance with Local Bankruptcy Rule 9006-1(d), the Liquidating Trustee may, at its option, file and serve a reply to a Response no later than 4:00 p.m. (Prevailing Eastern Time) one day prior to the deadline for filing the agenda for any hearing to consider the Second Trust Omnibus Objection.

**SEPARATE CONTESTED MATTERS**

24. To the extent that a Response is filed regarding any Claim identified in this Second Trust Omnibus Objection and the Liquidating Trustee is unable to resolve the Response, the objection by the Liquidating Trustee to each such Claim asserted herein shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in the Second Trust Omnibus Objection shall be deemed a separate order with respect to each Claim.

**RESERVATION OF RIGHTS**

25. The Liquidating Trustee hereby reserves the right to object in the future to any of the Claims that are the subject of this Second Trust Omnibus Objection on any ground, and to amend, modify, and/or supplement this Second Trust Omnibus Objection, including, without limitation, to object to amended or newly-filed claims and to claims filed against the wrong Debtor. Without limiting the generality of the foregoing, the Liquidating Trustee specifically reserves all rights under section 502(d) of the Bankruptcy Code to object further to any of the Claims.



**NOTICE**

26. Notice of this Second Trust Omnibus Objection shall be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) each of the claimants whose Claim is subject to this Second Trust Omnibus Objection; and (iii) all entities requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Liquidating Trustee submits that no further notice is required.

**COMPLIANCE WITH LOCAL BANKRUPTCY RULE 3007-1**

27. The undersigned representative of Womble Carlyle Sandridge & Rice LLP certifies that he has reviewed the requirements of Local Bankruptcy Rule 3007-1 and that the Second Trust Omnibus Objection substantially complies with that Local Bankruptcy Rule. To the extent that the Second Trust Omnibus Objection does not comply in all respects with the requirements of Local Bankruptcy Rule 3007-1, Womble Carlyle Sandridge & Rice LLP believes that such deviations are not material and respectfully requests that any such requirement be waived.

WHEREFORE, for the reasons stated, the Liquidating Trustee respectfully requests the entry of an order, substantially in the form attached hereto as Exhibit C, sustaining the Second Trust Omnibus Objection, disallowing each of the No Liability Claims, and granting such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware  
October 16, 2013

WOMBLE CARLYLE SANDRIDGE & RICE LLP

/s/ Matthew P. Ward

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– and –

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Liquidating Trust*