

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

**In re**

**CONEXANT SYSTEMS INC., *et al.*,<sup>1</sup>**

**Reorganized Debtor.**

**Chapter 11**

**Case No. 13-10367 (MFW)**

**Hearing Date: December 19, 2014 at 9:30 a.m. (ET)**

**Objection Deadline: December 12, 2014 at 4:00 p.m. (ET)**

**MOTION FOR ORDER (A) ENFORCING CONFIRMATION ORDER, (B) HOLDING CALIFORNIA INSURANCE GUARANTEE ASSOCIATION IN CONTEMPT, AND (C) IMPOSING SANCTIONS FOR WILLFUL VIOLATION OF CONFIRMATION ORDER'S DISCHARGE AND INJUNCTION PROVISIONS**

Conexant Systems, Inc. ("Conexant"), hereby files this Motion (the "Motion") for entry of an Order (a) enforcing this Court's Confirmation Order (as defined below), (b) holding the California Insurance Guarantee Association ("CIGA") in contempt, and (c) imposing sanctions for knowing and willful violation of the discharge and injunction provisions imposed by the Confirmation Order. In support of the Motion, Conexant states as follows:

**Jurisdiction**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and Article XI of the Plan. 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.

2. The statutory predicates for the relief requested herein are sections 105 and 1142 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code") and Rule 9020 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

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<sup>1</sup> The Reorganized Debtor in this case, along with the last four digits of the Reorganized Debtor's federal tax identification number is Conexant Systems, Inc. (9439). The Reorganized Debtor's main corporate address is 1901 Main Street, Suite 300, Irvine, CA 92614. The chapter 11 cases of the Reorganized Debtor's affiliated debtors have been closed.

### **Case Background**

3. On February 28, 2013, each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). Information regarding the Debtors’ businesses, their capital and debt structure, and the events leading to the filing of these Chapter 11 Cases is contained in the *Declaration of Sailesh Chittipeddi, President and CEO of Conexant Systems, Inc., In Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 3].

4. On April 19, 2013, the Debtors filed the *Second Modified Joint Plan of Reorganization of Conexant Systems, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 206] (the “Plan”).<sup>2</sup>

5. On May 13, 2013, the Debtors filed the *Plan Supplement to the Second Modified Joint Plan of Reorganization of Conexant Systems, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 241], and on May 24, 2013, the Debtors filed the *First Supplement to the Plan Supplement to the Second Modified Joint Plan of Reorganization of Conexant Systems, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 262].

6. On June 6, 2013, the Court entered its *Findings of Facts, Conclusions of Law, and Order 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 “Confirmation Order”) [Docket No. 287].

7. The Plan’s Effective Date occurred on July 12, 2013. [Docket No. 322].

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<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Plan.

### **CIGA Background**

8. CIGA is an association statutorily created by the State of California to provide member insurers with insolvency insurance, including insurance against loss arising from the failure of an independent insurer to discharge its obligations under its insurance policies. *See Cal. Ins. Code* §§ 119.5, 1063(a).

9. In July 1997, Lloyd Lewis (“Mr. Lewis”), filed certain workers’ compensation claims (the “WC Claims”) with the State of California’s Workers’ Compensation Appeals Board (the “WC Appeals Board”) against Kimco Staffing Services, Inc. (“Kimco”), a temporary staffing agency (the “Lewis WC Proceedings”). Mr. Lewis alleged he sustained multiple injuries in 1995 and 1996 while employed by Kimco during a placement with Rockwell Semiconductor Systems (“Rockwell”). Rockwell is Conexant’s predecessor by virtue of its spin-off from Rockwell International Corp. (“Rockwell International”) in 1998.

10. In June 2000, the Los Angeles Superior Court placed Kimco’s workers’ compensation insurer, California Compensation Insurance Company (“California Compensation”), into insolvency proceedings, and the insurer’s assets were liquidated. After California Compensation was liquidated, Mr. Lewis joined CIGA as a party to the Lewis WC Proceedings before the WC Appeals Board.

11. Thereafter, in June 2002, CIGA petitioned (the “Joinder Petition”) the WC Appeals Board to join Rockwell International as a defendant in the Lewis WC Proceedings, asserting that Rockwell International was solely responsible as an “alternate insurer” for all workers’ compensation benefits paid to or on behalf of Mr. Lewis subsequent to the date of California Compensation’s insolvency in September 2000. The WC Appeals Board granted the Joinder Petition, and a copy of the WC Appeals Board’s Order joining Rockwell International as a party-defendant is attached hereto as **Exhibit A**. Though Conexant was not formally named, as

Rockwell Semiconductor's successor, was not formally joined, Conexant has been a party to the Lewis WC Proceedings since Rockwell's joinder in 2002 as successor to Rockwell's Rockwell Semiconductor division.<sup>3</sup>

12. Mr. Lewis's WC Claims remain pending before the WC Appeals Board. Upon the filing of Conexant's bankruptcy petition with this Court, however, CIGA was formally notified of the bankruptcy filing and included in the Debtors' creditor matrix (the "Creditor Matrix"). See *Notice of Filing Creditor Matrix* [Docket No. 11], attached hereto as **Exhibit B** (in relevant part). Although CIGA was included in the Creditor Matrix and served with pleadings in the bankruptcy case, it did not file a claim against Conexant. See *Final Claims Register of Conexant Systems, Inc.* [Docket No. 302], attached hereto as **Exhibit C**.

13. In April 2013, CIGA was served with the *Disclosure Statement for the Second Modified Joint Plan of Reorganization of Conexant Systems, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Disclosure Statement") [Docket No. 207], to which the Plan was attached as Exhibit A. See *Affidavit of Service* [Docket No. 219], attached hereto as **Exhibit D** (in relevant part). CIGA did not file an objection to the Disclosure Statement or the Plan.

14. After this Court confirmed the Plan in June 2013, CIGA was also served with the Confirmation Order and the *Notice of (A) Entry of Order Confirming the Second Modified Joint Plan of Reorganization of Conexant Systems, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code; (B) Administrative Claim Bar Date and (C) Deadline to Object to Assumption and Assignment of Contracts* [Docket No. 297]. See *Affidavit of Service* [Docket No. 298], attached hereto as **Exhibit E** (in relevant part).

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<sup>3</sup> After a series of restructuring events (including the Conexant spinoff from Rockwell International in 1999), Rockwell International ceased doing business in 2001.

15. In February 2014, Conexant petitioned the WC Appeals Board for dismissal of Conexant as a party-defendant and a stay of any claims against Conexant, based on the discharge and injunction provisions of the Plan and Confirmation Order and this Court's retention of jurisdiction under the Confirmation Order. A true and correct copy of Conexant's *Petition for Stay Order/Dismissal of Conexant/Rockwell Semi-Conductor re: Bankruptcy* (the "Petition for Stay and Dismissal") filed with the WC Appeals Board is attached hereto as **Exhibit F**.

16. The WC Appeals Board has not ruled on Conexant's Petition for Stay and Dismissal, and by letter to Conexant's counsel dated October 24, 2014, Judge Barnes of the WC Appeals Board advised that "Petitions for Stay are not normally handled by a line judge." *See October 24, 2014 Letter from Judge Barnes*, attached hereto as **Exhibit G**. A conference before Judge Barnes will be held on December 2, 2014, at which point Judge Barnes has indicated he will consider whether the California Self-Insurers' Security Fund should be joined as a party-defendant<sup>4</sup> and whether the WC Claims should be set for trial. *See id.*

17. On multiple occasions since the Confirmation Order was entered, and as recently as within the past two weeks, Conexant has requested CIGA to voluntarily dismiss Conexant as a party-defendant in the Lewis WC Proceedings based on the clear terms of discharge and injunction provisions of the Plan and Confirmation Order. To date CIGA has refused to do so, and has not responded to Conexant's most recent request, thus prompting the need for Conexant to file this Motion.

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<sup>4</sup> Conexant notes that in his October 24, 2014 letter, Judge Barnes suggests that the California Self-Insurers' Security Fund, rather than Conexant, may be the proper party to the Lewis WC Proceedings. Although CIGA joined Conexant as a party-defendant over ten years ago, the WC Appeals Board has not ruled on whether Conexant is a proper party to the proceedings. As a result of the discharge and injunction under the Plan and Confirmation Order, however, whether Conexant was ever a properly-joined party is moot, because CIGA's claim against it as an alternate insurer has been discharged.

**DISCHARGE, INJUNCTION AND RETENTION OF JURISDICTION**

13. Both the Plan and the Confirmation Order contain broad provisions discharging claims against the Debtors and enjoining claimants from pursuing such claims. This Court by the Confirmation Order retained exclusive jurisdiction to adjudicate disputes over and enforce those provisions.

**Discharge Provisions**

14. Article VIII.B of the Plan, titled “Discharge of Claims and Termination of Interests,” provides in relevant part,

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument or other agreement or document created pursuant to the Plan, the distributions, rights and treatment provided in the Plan shall be in complete satisfaction, discharge and release, effective as of the Effective Date, of Claims ... Interests and Causes of Action of any nature whatsoever ... whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties ... **The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.** (emphasis added)

15. Likewise, the Confirmation Order, at paragraph 106, titled “Discharge of Claims and Termination of Interests,” provides that “As provided in Article VIII.B of the Plan, pursuant to section 1141(d) of the Bankruptcy Code and except as otherwise specifically provided in the Plan, herein or in any contract, instrument or other agreement or document created pursuant to the Plan, the provision in the Plan with respect to the discharge of Claims and termination of Interests is approved in all respects. **This Confirmation Order shall constitute a judicial determination of the discharge of all Claims and Interests subject to the occurrence of the Effective Date.**” (emphasis added)

**Injunction Provisions**

16. The Plan also provided for a broad injunction of actions based on claims released and discharged. Article VIII.H of the Plan provides in relevant part,

FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN OR THE CONFIRMATION ORDER.

\* \* \*

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN, THE PLAN SUPPLEMENT OR RELATED DOCUMENTS, OR IN OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR INTERESTS ... DISCHARGED PURSUANT TO ARTICLE VIII.B ... ARE PERMANENTLY ENJOINED FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS

\* \* \*

THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER ... ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED.

17. The Confirmation Order, at paragraph 111, provides that “From and after the Effective Date, and as contemplated in Article VIII.H of the Plan, the Injunction shall be in full force and effect.”

**Retention of Jurisdiction**

18. Finally, the Plan at Article XI provides for this Court's retention of exclusive jurisdiction over "all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105 and 1142 of the Bankruptcy Code," including jurisdiction to:

7. enter and implement such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan, the Plan Supplement or the Disclosure Statement;

\* \* \*

10. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan.

11. resolve any cases, controversies, suits, disputes or Causes of Action with respect to the releases, injunctions and other provisions contained in Article VIII, and enter such orders as may be necessary or appropriate to implement such releases, injunctions and other provisions."

\* \* \*

21. hear and determine all disputes involving the existence, nature, scope or enforcement of any exculpations, discharges, injunctions and releases granted in connection with and under the Plan, including under Article VIII.

19. The Confirmation Order, at paragraph 135, provides that "Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to Article XI of the Plan."

### **RELIEF REQUESTED**

20. By this Motion, Conexant seeks entry of an Order (i) enforcing the discharge and injunction provisions of the Plan and Confirmation Order, (ii) requiring CIGA to



voluntarily dismiss Conexant as a party-defendant in the Lewis WC Proceedings before the WC Appeals Board, and (iii) if CIGA does not voluntarily dismiss the Conexant from the proceedings before the WC Appeals Board by the objection deadline set for this Motion, finding CIGA in contempt and issuing sanctions against CIGA by awarding Conexant its costs (including attorneys' fees) incurred (a) preparing and prosecuting this Motion, and (b) in connection with the Lewis WC Proceeding since July 12, 2013, including defending itself against CIGA's "alternate insurer" claims and seeking dismissal before the WC Appeals Board.

### **Enforcement of Confirmation Order**

21. This Court has the inherent power to enforce its own order. *In re Continental Airlines, Inc.*, 236 B.R. 318, 325–26 (Bankr. D. Del. 1999), *aff'd*, 279 F.3d 226 (3d Cir. 2002) (citations omitted); see also FED. R. BANKR. P. 3020(d) (“[n]otwithstanding the entry of the order of confirmation, the court may issue any other order necessary to administer the estate.”). Bankruptcy Code section 105(a) provides that a bankruptcy court is authorized to issue any order, process or judgment necessary to carry out the provisions of the Bankruptcy Code, and “gives the bankruptcy court ‘the power and the jurisdiction to enforce its valid orders.’” *In re Marcus Hook Dev. Park, Inc.*, 943 F.2d 261, 266 (3d Cir. 1991) (quoting *In re Radco Merch. Servs., Inc.*, 111 B.R. 684, 688–89 (N.D. Ill. 1990)); 11 U.S.C. § 105(a). In the exercise of this authority, courts have inherent powers to enforce compliance with and execution of their lawful orders. *See, e.g., Continental Airlines*, 236 B.R. at 331 (finding creditors in contempt of plan and confirmation order and awarding debtor attorneys' fees and costs); *In re Kennedy*, 80 B.R. 673 (Bankr. D. Del. 1987) (finding party in contempt of court order and awarding attorneys' fees incurred in bringing motion for contempt).

22. In the context of enforcing a confirmed plan, section 1142(b) of the Bankruptcy Code permits the court to order performance of the plan:

(b) The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

11 U.S.C. § 1142(b); *Pioneer Liquidating Corp. v. U.S. Trustee (In re Consol. Pioneer Mortgage Entities)*, 248 B.R. 368, 384 (B.A.P. 9th Cir. 2000) (“the Code gives the bankruptcy court authority to ‘direct the debtor and any other necessary party’ to perform any act necessary to consummate the plan, and ‘to issue any order, process or judgment that is necessary or appropriate to carry out the provisions’ of the Code.”) (citing 11 U.S.C. §§ 105(a) and 1142(b)). “Subsection (b) implicitly contemplates a creditor, shareholder, or other party affected by the plan moving for an order which triggers the court’s authority to direct a recalcitrant debtor or other party to perform acts necessary to consummate the plan.” *Harlow v. Palouse Producers, Inc. (In re Harlow Props., Inc.)*, 56 B.R. 794, 798 (B.A.P. 9th Cir. 1985).

23. Indeed, a bankruptcy court has “broad power” under section 1142(b) to enforce the terms of a confirmed plan and to ensure that the plan is being implemented consistent with the terms of the plan. *See Gordon Sel-Way, Inc. v. United States (In re Gordon Sel-Way, Inc.)*, 270 F.3d 280, 289 (6th Cir. 2001) (“[S]everal courts have held that 11 U.S.C. § 1142 provides bankruptcy courts with broad power to enforce the terms of a confirmed plan.”); *see also Hillis Motors, Inc. v. Haw. Auto. Dealers’ Ass’n*, 997 F.2d 581, 587 n.11 (9th Cir. 1993) (“Regardless of any plan provision, a bankruptcy court has statutory jurisdiction under 11 U.S.C. § 1142(b) to ensure that any act necessary for the consummation of the plan is carried out and it has continuing responsibilities to satisfy itself that the plan is being properly implemented.”) (citations omitted).

24. As set forth above, both the Plan and the Confirmation Order discharge pre-petition claims against the Debtors. The allegations that form the basis of the WC Claims,

and thus CIGA's asserted claim that Conexant is responsible for the WC Claims, constitute pre-petition claims. As such, CIGA's claim against Conexant was clearly and unequivocally discharged under Article VIII.B of the Plan and paragraph 106 of the Confirmation Order. Likewise, Article VIII.H of the Plan and paragraph 111 of the Confirmation Order enjoined further pursuit of such discharged claims. Importantly, Mr. Lewis is still able to pursue his WC Claims before the WC Appeals Board against CIGA, but CIGA cannot assert a claim against Conexant as an alternate insurer. CIGA's continued assertion of its alleged claim against Conexant based on Conexant's alleged responsibility for the WC Claims violates the Confirmation Order's discharge and injunction provisions.

25. CIGA's claim against Conexant was discharged and is enjoined under the Plan and Confirmation Order, and this Court retained exclusive jurisdiction to hear any and all claims related to the discharge and injunctive provisions of the Plan. Pursuant to the Court's inherent power to enforce its own orders, this Court should order CIGA to voluntarily dismiss Conexant from the Lewis WC Proceedings before the WC Appeals Board. Allowing CIGA to continue to assert its claim against Conexant would contravene the Confirmation Order's provisions regarding discharge and injunction.

#### **Contempt and Sanctions**

26. It is well-settled that bankruptcy courts have the power to issue civil contempt orders where parties have violated an order of the court. *See, e.g. Nisselson v. Empyrean Inv. Fund, L.P. (In re Marketxt Holdings Corp.)*, 2006 Bankr. LEXIS 3951, at \*5 (Bankr. S.D.N.Y. Jan. 27, 2006) ("It is well accepted, in list of the 2001 amendments to Rule 9020, that bankruptcy courts have the power to enter civil contempt orders.").

27. Imposition of a civil contempt order by a bankruptcy court requires a showing of two elements: (1) the existence of a clear, specific, enforceable order or statute

unambiguously commanding a party to perform or refrain from performing certain acts; and (2) such party's non-compliance with the order or statute. *In re Keane*, 110 B.R. 477, 482-83 (S.D. Cal. 1990); *In re Andrus*, 184 B.R. 311, 315 (Bankr. N.D. Ill. 1995), *aff'd*, 189 B.R. 413 (N.D. Ill. 1995).

28. Here both elements for the Court to enter a civil contempt order exist because (a) the Confirmation Order clearly prohibits actions based on a claim discharged under the Plan, and (b) CIGA is in violation of the Confirmation Order by refusing to dismiss Conexant from the Lewis WC Proceedings before the WC Appeals Board and seeking to hold Conexant liable for the WC Claims. Furthermore, CIGA's violation is knowing and willful, as it is clearly aware of the Plan and Confirmation Order, both of which were served on it and the discharge and injunction provisions of which Conexant has raised with CIGA multiple times in seeking voluntary dismissal. If CIGA has not voluntarily dismissed Conexant from the Lewis WC Proceedings before the WC Appeals Board prior to the objection deadline for this Motion, CIGA should be found in contempt and should be sanctioned in an amount not less than Conexant's costs (including attorneys' fees) in preparing, filing and prosecuting this Motion and otherwise defending itself against CIGA's "alternate insurer" claims and seeking dismissal from the Lewis WC Proceedings since July 12, 2013 when the Confirmation Order was entered. *Int'l Broth. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., Local 249 v. Western Penn. Motor Carriers Ass'n*, 660 F.2d 76, 84 (3d Cir. 1981) (attorneys' fees may be awarded for civil contempt for willful disobedience of a court order).

#### **NOTICE**

29. Notice of this Motion has been given to (a) CIGA, (b) the United States Trustee, (c) the Liquidating Trustee, (d) all parties requesting notice pursuant to Bankruptcy Rule 2002, and (e) all parties receiving notice in the Lewis WC Proceedings on the WC Claims.

Conexant submits that such notice is adequate and proper and respectfully submits that no other or further notice is necessary or required. No prior motion for the relief sought herein has been made to this or any other court.

WHEREFORE, Conexant requests that this Court enter the Order, substantially in the form attached hereto as **Exhibit H**, (a) enforcing this Court's Confirmation Order (b) if it has not voluntarily dismissed Conexant from the proceedings on the WC Claims before the WC Appeals Board prior to the objection deadline stated in the caption of this Motion, holding CIGA in contempt and imposing sanctions for knowing and willful violation of the injunction imposed by the Confirmation Order, and (c) granting such other and further relief as may be just and proper.

Dated: November 26, 2014  
Wilmington, Delaware

Respectfully submitted,

Pepper Hamilton LLP

/s/ Michael J. Custer

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