

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

In re:)	
)	Chapter 11
CONEXANT SYSTEMS, INC., <i>et al.</i> , ¹)	Case No. 13-10367 (MFW)
)	
Debtors.)	Jointly Administered
)	

**DEBTORS' APPLICATION TO EMPLOY AND
RETAIN ALVAREZ & MARSAL NORTH AMERICA, LLC AS
FINANCIAL ADVISOR TO THE DEBTORS AND DEBTORS IN POSSESSION
PURSUANT TO SECTIONS 327(A) AND 328 OF THE BANKRUPTCY CODE**

Conexant Systems, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*”),² request entry of an order pursuant to sections 327(a) and 328 of the Bankruptcy Code, authorizing the employment and retention of Alvarez & Marsal North America, LLC, together with employees of its affiliates (all of which are wholly-owned by its parent company and employees), its wholly owned subsidiaries, and independent contractors (collectively, “*A&M*”) to serve as financial advisor to the Debtors, *nunc pro tunc* to the Petition Date (the “*Application*”). In support of the Application, the Debtors respectfully state as follows:

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and

¹ 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.

² 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 [Docket No. 3] (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*”).

1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 327(a), 328, 330, 331 and 1107(b) of the Bankruptcy Code, Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) and Rules 2014-1, 2016-1 and 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”).

Relief Requested

4. By this Application, the Debtors seek to employ and retain A&M as their financial advisor, pursuant to sections 327(a) and 328 of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, to perform the services set forth more fully herein, *nunc pro tunc* to the Petition Date.

Retention of A&M

5. Because of the size and complexity of their businesses, as well as the exigencies of their financial circumstances, the Debtors have determined that the services of an experienced financial advisor will substantially enhance their attempts to maximize the value of these estates. The Debtors have determined that A&M is well qualified to provide these services in light of their extensive knowledge and expertise with respect to chapter 11 proceedings, as well as A&M’s experience advising the Debtors over the last five months.

6. A&M specializes in interim management, crisis management, turnaround consulting, operational due diligence, creditor advisory services and financial and operational restructuring. A&M’s debtor advisory services have included a wide range of activities targeted at stabilizing and improving a company’s financial position, including developing or validating forecasts, business plans and related assessments of a business’s strategic position; monitoring

and managing cash, cash flow and supplier relationships; assessing and recommending cost reduction strategies; and designing and negotiating financial restructuring packages.

7. Since its inception in 1983, A&M has been a global provider of turnaround advisory services to companies in crisis or those in need of performance improvement in specific financial and operational areas, including: *In re Hawker Beechcraft, Inc.*, No. 12-11873 (SMB) (Bankr. S.D.N.Y. May 3, 2012); *In re Appleseed's Intermediate Holdings LLC*, No. 11-10160 (KG) (Bankr. D. Del. Jan. 19, 2011); *In re Cooper-Standard Holdings Inc.*, No. 09-12743 (PJW) (Bankr. D. Del. Aug. 3, 2009); *In re Visteon Corp.*, No. 09-11786 (CSS) (Bankr. D. Del. May 27, 2009); *In re Masonite Corp.*, No. 09-10844 (PJW) (Bankr. D. Del. Apr. 13, 2009); *In re Tronox Inc.*, No. 09-10156 (ALG) (Bankr. S.D.N.Y. Jan. 12, 2009); *In re Leiner Health Prod. Inc.*, No. 08-10446 (KJC) (Bankr. D. Del. Apr. 8, 2008); *In re DJK Residential LLC*, No. 08-10375 (DJK) (Bankr. S.D.N.Y. Feb. 26, 2008); *In re Movie Gallery, Inc.*, No. 07-33849 (DOT) (Bankr. E.D. Va. Oct. 15, 2007); *In re Interstate Bakeries Corp.*, No. 04-45814 (CAN) (Bankr. W.D. Mo. Oct. 25, 2004); *In re Spiegel, Inc.*, No. 03-11540 (BRL) (Bankr. S.D.N.Y. Apr. 10, 2003); *In re Network Plus Corp.*, No. 02-10341 (MFW) (Bankr. D. Del. July 1, 2002); *In re VecTour, Inc.*, No. 01-10903 (KJC) (Bankr. D. Del. Feb. 11, 2002); *In re The Warnaco Group, Inc.*, No. 01-41643 (RLB) (Bankr. S.D.N.Y. Dec. 13, 2001).

8. In addition, A&M is familiar with the Debtors' businesses, financial affairs and capital structure. Since the firm's initial engagement on September 24, 2012, the A&M personnel providing services to the Debtors (the "**A&M Professionals**") have worked closely with the Debtors' management and other professionals assisting in all matters associated with the Debtors' restructuring initiatives and these chapter 11 cases. Consequently, the Debtors believe that A&M has developed significant relevant experience and expertise regarding the Debtors and

the unique circumstances of these cases. For these reasons, A&M is both well qualified and uniquely suited to deal effectively and efficiently with matters that may arise in the context of these cases. Accordingly, the Debtors submit that the retention of A&M on the terms and conditions set forth herein is necessary and appropriate and is in the best interests of the Debtors' estates, creditors, and all other parties in interest.

Scope of Services

9. The Debtors and A&M are parties to an engagement letter, dated February 19, 2013 (the "*Engagement Letter*," a copy of which is attached hereto as **Exhibit 1** to **Exhibit A**).³ The terms of the Engagement Letter govern the Debtors' retention of A&M except as explicitly set forth herein.⁴

10. Among other things, A&M will provide assistance to the Debtors with respect to management of the overall restructuring process and day-to-day matters associated with business operations and these chapter 11 cases.

11. More specifically, A&M will provide such restructuring support services as A&M and the Debtors shall deem appropriate to manage and advise the Debtors during these chapter 11 cases, including, but not limited to:

- a. perform a financial review of the Debtors, including but not limited to a review and assessment of financial information that has been, and that will be, provided by the Debtors to its creditors, including, without limitation, its short and long-term projected cash flows;

³ The Debtors previously entered into engagement letters with A&M dated September 24, 2012, October 12, 2012 and November 12, 2012. The Engagement Letter incorporates and supersedes these prior letters.

⁴ The summary of the Engagement Letter in this Application is qualified in its entirety by reference to the provisions of the Engagement Letter. To the extent there is any discrepancy between the summary contained in this Application and the terms set forth in the Engagement Letter, the terms of the Engagement Letter shall control, except as otherwise set forth herein. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Engagement Letter.

- b. perform a review and assessment of the Debtors' current liquidity position, including a 13-week cash flow forecast;
- c. assist in the formulation, evaluation and/or implementation of possible restructuring plans or strategic alternatives in an effort to maximize the enterprise value of the Debtors and advise as to certain engagement team members' views of the advantages and disadvantages;
- d. provide financial advisory services to the Debtors in connection with the structuring any new securities to be issued under an in-court restructuring, and, if necessary, valuation of the Debtors or any new securities to be issued under a plan of reorganization;
- e. assist the Debtors in negotiations with creditors and other appropriate parties-in-interest;
- f. assist in identification of cost reduction and operations improvement opportunities;
- g. assist the Debtors in the management and execution of a Sale Transaction (as defined in the Engagement Letter), including preparing informational materials for distribution to potential purchasers, identifying and soliciting interest among prospective purchasers, evaluating proposals received for prospective purchasers and assisting in negotiating the financial terms and structure of any Sale Transaction;
- h. assist in the identification of "debtor in possession" and exit financing;
- i. assistance in the preparation of information and analysis necessary for the confirmation of a plan of reorganization in these chapter 11 cases, including information contained in the disclosure statement; and
- j. rendering such other general business consulting or such other assistance as the Debtors' management or counsel may deem necessary consistent with the role of a financial advisor to the extent that it would not be duplicative of services provided by other professionals in this proceeding.

12. As set forth in the Engagement Letter, to the extent A&M is asked to provide the services under paragraphs (c), (d), (e), (g) and (h) above (the "*Corporate Finance Services*"), such services are to be provided by A&M's wholly-owned subsidiary broker/dealer, Alvarez & Marsal Securities, LLC ("*A&M-S*").

A&M's Disinterestedness

13. To the best of the Debtors' knowledge, information and belief, other than as set forth in the Declaration of Shawn Hassel (the "*Hassel Declaration*," a copy of which is annexed hereto as **Exhibit B**), A&M: (i) has no connection with the Debtors, their creditors, other parties in interest, or the attorneys or accountants of any of the foregoing, or the U.S. Trustee or any person employed in the Office of the U.S. Trustee; (ii) does not hold any interest adverse to the Debtors' estates; and (iii) believes it is a "disinterested person" as defined by section 101(14) of the Bankruptcy Code.

14. Accordingly, the Debtors believe that A&M is "disinterested" as such term is defined in section 101(14) of the Bankruptcy Code.

15. In addition, as set forth in the Hassel Declaration, if any new material facts or relationships are discovered or arise during the course of these chapter 11 cases, A&M will file supplemental declarations with the Court.

Terms of Retention

16. The Debtors propose to compensate A&M in accordance with the following terms and conditions (all as set forth in the Engagement Letter):

17. **Compensation.** A&M will be paid by the Debtors for the services of the A&M Professionals at their customary hourly billing rates which are as follows:

Billing Category	Range
Managing Directors	\$625-\$850
Directors	\$450-\$625
Associates	\$300-\$450
Analysts	\$225-\$300

18. Such rates and ranges are subject to adjustment annually at such time as A&M adjusts its rates generally.

19. Pursuant to the Engagement Letter, the Debtors have already paid A&M-S a fixed fee of \$185,000 for the valuation provided by A&M-S pursuant to Section 1(a)(iv) of the Engagement Letter, which valuation is incorporated into the Disclosure Statement filed with the court on February 28, 2013 [Docket No. 13].

20. Monthly fee. In accordance with the terms of the Engagement Letter, A&M-S will be paid by the Debtors a monthly advisory fee of \$85,000 (the "**Monthly Fee**"), solely in relation to the services provided by A&M-S in connection with a Sale Transaction. Fifty percent of all Monthly Fees beginning with the Monthly Fee payable on January 9, 2013 shall be credited against the Sale Transaction Fee (as defined below) if any. A&M had previously received a Monthly Fee for November 2012 through February 2013 when the Debtors were pursuing a sale of substantially all of their assets, but these efforts were recently discontinued. As a result, A&M is no longer receiving the Monthly Fee. In the event the Debtors restart a Sale Transaction process, A&M will resume receiving a Monthly Fee at such time.

21. Expenses. A&M will be reimbursed for the reasonable out-of-pocket expenses of the A&M Professionals incurred in connection with this assignment, such as travel, lodging, third party duplications and messenger and telephone charges. In addition, A&M shall be reimbursed for the reasonable fees and expenses of its counsel incurred in connection with the preparation and approval of this Application. All fees and expenses due to A&M will be billed in accordance with any interim compensation orders entered by this Court, and the relevant sections of the Bankruptcy Code, Bankruptcy Rules and Local Rules.

22. Sale Transaction Fee. A&M-S will be paid a Sale Transaction fee (the "**Sale Transaction Fee**") upon closing of a Sale Transaction, if any, equal to: (i) to the extent any Sale Transaction results in sale proceeds ("**Sale Proceeds**") of up to \$60,000,000, a Sale Transaction

Fee equal to 1.0% of such Sale Proceeds; (ii) to the extent any Sale Transaction results in Sale Proceeds of more than \$60,000,000 but less than \$120,000,000, A&M-S shall be entitled a 1.25% fee on such Sale Proceeds over and above \$60,000,000 (with a 1% fee applicable to the first \$60,000,000 of proceeds); and (iii) to the extent any Sale Transaction results in Sale Proceeds of more than \$120,000,000, A&M-S shall be entitled to a 1.50% on such Sale Proceeds over \$120,000,000 (with a 1% fee applicable to the first \$60,000,000 and a 1.25% fee applicable to next \$60,000,000); *provided, however*, that in connection with any secured noteholder's credit bid pursuant to section 363(k) of the Bankruptcy Code, in an instance where (a) no third party has submitted a letter of intent to consummate a Sale Transaction at any time during the sale process; and (b) (i) the investor holding the existing secured notes as of the date of the Engagement Letter has not changed, the Sale Transaction Fee shall be \$600,000; or (ii) in the case where the investor holding the existing secured notes as of the date of the Engagement Letter has sold such debt to an unaffiliated party (as determined in good faith by A&M and the Debtors), then the Sale Transaction Fee shall be the greater of (x) \$600,000 and (y) the applicable percentages outlined above multiplied by the purchase price paid to the holder of the existing secured notes (all as determined in good faith by A&M and the Debtors). Furthermore, the Sale Transaction Fee shall not be less than \$250,000 (net of any Monthly Fee crediting).

23. Furthermore, the Debtors will pay A&M-S the Sale Transaction Fee in respect of the Sale Transaction if, within 12 months from the termination or expiration of the Engagement Letter, and solely to the extent that (i) no fees other than hourly or Monthly Fees shall have been paid to A&M and (ii) A&M is not terminated for cause, the Debtors enter into an agreement that subsequently results in a Sale Transaction involving a party (or affiliate of such or entity formed by such to effectuate a Sale Transaction) from which A&M-S approached and had substantial

discussions regarding a Sale Transaction during A&M's retention. Notwithstanding anything in the Engagement Letter, the Debtors' obligation to pay the Sale Transaction Fee shall terminate on the effective date of a plan of reorganization.

24. Indemnification. As a material part of the consideration for which the A&M Professionals have agreed to provide the services described herein, the Debtors have agreed to the indemnification provisions in paragraph 10 of the Engagement Letter.⁵ Notwithstanding paragraph 10 of the Engagement Letter, the Debtors and A&M have agreed to modify such provisions as follows during the pendency of these chapter 11 cases:

- A&M shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Letter for services, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court;
- The Debtors shall have no obligation to indemnify A&M, or provide contribution or reimbursement to A&M, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from A&M's gross negligence, willful misconduct, breach of fiduciary duty, if any, bad faith or self-dealing; (ii) for a contractual dispute in which the Debtors allege the breach of A&M contractual obligations unless the Court determines that indemnification, contribution or reimbursement would be permissible pursuant to *In re United Artists Theatre Company, et al.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to A&M's gross negligence, willful misconduct, breach of fiduciary duty or bad faith or self-dealing but determined by this Court, after notice and a hearing to be a claim or expense for which A&M should not receive indemnity, contribution or reimbursement under the terms of the Agreement as modified by this Order;
- If before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these chapter 11 cases, A&M believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Letter (as modified by this Application), including without limitation the advancement of defense costs, A&M must file an application

⁵ Paragraph 10 of the Engagement Letter incorporates by reference that certain indemnification and limitation on liability agreement attached to A&M's and the Debtors' preceding engagement letter dated October 12, 2012. This indemnification and limitation on liability agreement is attached hereto as **Exhibit 2** to **Exhibit A**.

therefore in this Court, and the Debtors may not pay any such amounts to A&M before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by A&M for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify A&M. All parties in interest shall retain the right to object to any demand by A&M for indemnification, contribution or reimbursement; and

- Notwithstanding anything in the Engagement Letter, the indemnification obligations shall terminate on the effective date of a plan of reorganization.

Fee Arrangement and Retainer

25. The Debtors understand that A&M intends to apply to the Court for allowance of compensation and reimbursement of expenses for its financial advisory services in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, corresponding Local Rules, orders of this Court and guidelines established by the U.S. Trustee.

26. A&M received \$300,000 as a retainer before the filing of these chapter 11 cases, as described in the Engagement Letter. In the 90 days before the Petition Date, A&M received retainers and payments totaling \$2.81 million in the aggregate for services performed on behalf of the Debtors. A&M has applied these funds to amounts due for services rendered and expenses incurred before the Petition Date. A precise disclosure of the amounts or credits held, if any, as of the Petition Date will be provided in A&M's first interim fee application for postpetition services rendered and expenses incurred in these chapter 11 cases. The unapplied residual retainer, which is estimated to total approximately \$300,000, will not be segregated by A&M in a separate account, and will be held until the end of these chapter 11 cases and applied to A&M's finally approved fees in these proceedings.

27. Given the numerous issues that the A&M may be required to address in the performance of its services, A&M's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for such services for

engagements of this nature in an out-of-court context, as well as in chapter 11, the Debtors submit that the fee arrangements set forth herein are reasonable under the standards set forth in section 328(a) of the Bankruptcy Code.

Applicable Authority

28. The Debtors submit that the retention of A&M pursuant to the Engagement Letter and the terms described herein is appropriate under sections 327(a), 328, and 1107(b) of the Bankruptcy Code. Section 327(a) of the Bankruptcy Code empowers debtors in possession, with the Court's approval, to employ professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). Section 101(14) of the Bankruptcy Code defines a "disinterested person" as a person that:

- a. is not a creditor, an equity security holder, or an insider;
- b. is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
- c. does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason. 11 U.S.C. § 101(14).

29. Further, section 1107(b) of the Bankruptcy Code provides that "a person is not disqualified for employment under section 327 of this title by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case." 11 U.S.C. § 1107(b). Thus, A&M's prepetition relationship with the Debtors is not an impediment to A&M's retention in these chapter 11 cases.

30. Section 328(a) of the Bankruptcy Code authorizes the employment of a professional person "on any reasonable terms and conditions of employment, including on a retainer . . ." 11 U.S.C. § 328(a). Debtors submit that the terms and conditions of A&M's

retention as described herein, including the proposed compensation and indemnification terms, are reasonable and in keeping with the terms and conditions typical for engagements of this size and character. Since Debtors will require substantial assistance with the chapter 11 process, the Debtors believe it is appropriate and reasonable to employ and retain A&M to serve as its financial advisor on the terms and conditions set forth herein.

Notice

31. The Debtors have provided notice of this Application to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (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; and (l) the Securities and Exchange Commission. In light of the nature of the relief requested in this Application, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

32. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, for the reasons set forth herein and in the Hassel Declaration, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: March 6, 2013
Wilmington, Delaware

Conexant Systems, Inc
Brooktree Broadband Holding, Inc.
Conexant, Inc.
Conexant CF, LLC
Conexant Systems Worldwide, Inc.

/s/ Sailesh Chittipeddi

Sailesh Chittipeddi, Ph.D.
President and Chief Executive Officer
Conexant Systems, Inc.