

FILED & JUDGMENT ENTERED
Steven T. Salata

June 18 2020

Clerk, U.S. Bankruptcy Court
Western District of North Carolina



J. Craig Whitley
J. Craig Whitley
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re

ALDRICH PUMP LLC, *et al.*,¹

Debtors.

Chapter 11
Case No. 20-30608 ()
(Joint Administration Requested)

**EX PARTE ORDER AUTHORIZING THE EMPLOYMENT AND
RETENTION OF ALIXPARTNERS, LLP AS FINANCIAL ADVISOR
EFFECTIVE AS OF THE PETITION DATE**

This matter coming before the Court on the *Ex Parte Application of the Debtors for an Order Authorizing the Employment and Retention of AlixPartners, LLP as Financial Advisor Effective as of the Petition Date* (the "Application"),² filed by the above-captioned debtors and debtors in possession (together, the "Debtors"); the Court having reviewed the Application, the

¹ The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.

² Capitalized terms not otherwise defined herein have the meanings given to them in the Application.

Basler Declaration, and the Engagement Letter; and the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (d) notice of the Application was sufficient under the circumstances, (e) AlixPartners does not hold nor represent any interest materially adverse to the Debtors or their estates with respect to the matters on which AlixPartners is to be employed, as required by section 327(e) of the Bankruptcy Code, (f) the Debtor's retention and employment of AlixPartners is in the best interest of the estate as required by section 327(e) of the Bankruptcy Code, (g) the Application and all related schedules and exhibits fully comply with the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and the Compensation Guidelines; and the Court having determined that the legal and factual bases set forth in the Application and the Basler Declaration establish just cause for the *ex parte* relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Application is GRANTED.
2. Pursuant to section 327(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016 and Bankruptcy Local Rules 2014-1 and 2016-1, the Debtors are authorized to employ and retain AlixPartners as their financial advisor in these chapter 11 cases effective as of the Petition Date, in accordance with the terms and conditions set forth in the Application and Engagement Letter, except as provided by this Order.
3. The terms of the Engagement Letter, including without limitation, the Indemnification Provisions and the Fee and Expense Structure, are reasonable terms and conditions of employment and are approved in all respects, as modified by this Order.

4. AlixPartners shall file monthly, interim and final fee requests for allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in sections 330 and 331 of the Bankruptcy Code, applicable Bankruptcy Rules and the Local Rules, the Compensation Guidelines and any other such procedures as may be fixed by order of this Court. For billing purposes, AlixPartners shall keep its time in one-tenth (1/10) hour increments in accordance with the Compensation Guidelines.

5. The relief granted herein shall be binding upon any chapter 11 trustee appointed in these chapter 11 cases, or upon any chapter 7 trustee appointed in the event of a subsequent conversion of these chapter 11 cases to cases under chapter 7.

6. AlixPartners shall use its reasonable best efforts to avoid duplication of services provided by any of the Debtors' other retained professionals in these chapter 11 cases.

7. To the extent that there is any inconsistency between this Order and the Engagement Letter, Application or the Basler Declaration, the provisions of this Order shall govern.

8. The indemnification provisions included in the Engagement Letter and its attachments are approved, subject during the pendency of these chapter 11 cases to the following:

- (a) AlixPartners 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 thereof are approved by this Court;
- (b) The Debtors shall have no obligation to indemnify AlixPartners, or provide contribution or reimbursement to AlixPartners, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from AlixPartners' gross negligence, bad faith, or willful misconduct; or (ii) settled prior to a judicial determination as to AlixPartners gross negligence, willful misconduct, breach of fiduciary duty, or bad faith or self-dealing but determined by this Court after notice and hearing to be a claim or expense for which AlixPartners should not

receive indemnity, contribution or reimbursement under the terms of the Engagement Letter, as modified by this Order; and

- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in the chapter 11 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, AlixPartners 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 Order), including without limitation, the advancement of defense costs, AlixPartners must file an application therefor in this Court, and the Debtors may not pay any such amounts to AlixPartners 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 this Court shall have jurisdiction over any request for fees and expenses by AlixPartners for indemnification, contribution and/or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify, or make contributions or reimbursements to, AlixPartners. All parties in interest shall retain the right to object to any demand by AlixPartners for indemnification, contribution and/or reimbursement.

9. In the event that, during the pendency of these cases, AlixPartners seeks reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in AlixPartners' fee applications and such invoices and time records shall be in compliance with the Bankruptcy Local Rules, and shall be subject to the Compensation Guidelines and approval of the Court under the standards of Bankruptcy Code sections 330 and 331, without regard to whether such attorney has been retained under Bankruptcy Code section 327; provided, however, that AlixPartners shall not seek reimbursement from the Debtors' estates for any fees incurred in defending any of AlixPartners' fee applications in these bankruptcy cases.

10. To the extent AlixPartners uses the services of independent contractors (the "Contractors") in these Chapter 11 Cases, AlixPartners shall: (a) pass through the cost of such Contractors to the Debtors at the same rate that AlixPartners pays the Contractors; (b) seek

reimbursement for actual costs incurred; (c) ensure that the Contractors are subject to the same conflict checks as required for AlixPartners; and (d) file with the Court such disclosures required by Bankruptcy Rule 2014.

11. This Order shall immediately be effective and enforceable upon its entry.

12. Pursuant to Local Rule 9013-1(f), any party shall be entitled to a hearing or request that the Court reconsider the entry of this Order by filing a motion for reconsideration within 14 days of service of this Order.

13. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order in accordance with the Application.

14. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

This Order has been signed electronically. The judge's signature and court's seal appear at the top of the Order.

United States Bankruptcy Court