



ENTERED  
08/26/2019

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:	§	
	§	Chapter 11
	§	
KP ENGINEERING, LP, <i>et al.</i> ,	§	Case No. 19-34698 (DRJ)
	§	
Debtors. <sup>1</sup>	§	(Joint Administration Requested)
	§	(Emergency Hearing Requested)
	§	

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**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF  
OMNI AGENT SOLUTIONS AS CLAIMS AND NOTICING AGENT**

**[Relates to Application at Docket No. 5]**

Upon the application (the “**Application**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for retention and appointment of Omni Agent Solutions (“**Omni**”) as claims and noticing agent (“**Claims and Noticing Agent**”) pursuant to 28 U.S.C. § 156(c) and sections 105(a) and 327(a) of the Bankruptcy Code to, among other things, (i) serve as the noticing agent to mail notices to the estates’ creditors, equity security holders, and parties in interest; (ii) provide computerized claims, objection, solicitation, and balloting database services; and (iii) provide expertise, consultation, and assistance in claim and ballot processing and other administrative services with respect to the Debtors’ bankruptcy cases, pursuant to the provisions of the Engagement Agreement; and upon the First Day Declaration and the Deutch Declaration submitted in support of the Application; and the Debtors having estimated that there are thousands of creditors and parties in interest in these Chapter 11 Cases; and the Court being authorized under 28 U.S.C. §156(c) to utilize, at the Debtors’ expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain,

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: KP Engineering, LP (7785) and KP Engineering, LLC (0294). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 5555 Old Jacksonville Highway, Tyler, TX 75703.

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

photocopy, and transmit proofs of claim; and the Court being satisfied that Omni has the capability and experience to provide such services and that Omni does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and good and sufficient notice of the Application having been given under the circumstances and no other or further notice being required; and it appearing that the employment of Omni is in the best interests of the Debtors, their estates and creditors; and sufficient cause appearing therefor; it is **HEREBY ORDERED THAT:**

1. Notwithstanding the terms of the Engagement Agreement attached to the Application, the Application is approved solely as set forth in this Order.

2. The Debtors are authorized to retain Omni as Claims and Noticing Agent under the terms of the Engagement Agreement, and Omni is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these Chapter 11 Cases, and all related tasks, all as described in the Application and the Engagement Agreement. The Clerk's office shall provide Omni with ECF credentials that allow Omni to receive ECF notifications and file certificates of service.

3. Omni shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these Chapter 11 Cases and is authorized and directed to maintain official claims registers for each of the Debtors and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

4. Omni is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.

5. Omni is authorized to take such other action to comply with all duties and services set forth in the Application and the Engagement Agreement, including the provision of the solicitation and ballot processing services.

6. The Debtors are authorized to compensate Omni in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Omni and the rates charged for each, and to reimburse Omni for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for Omni to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. Omni shall maintain detailed records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the Office of the United States Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party in interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute that may arise relating to the Engagement Agreement or monthly invoices; provided that the parties may seek resolution of the matter from the Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Omni under this Order shall be an administrative expense of the Debtors' estates.

10. Omni may apply its advance to all prepetition invoices, which advance may be replenished to the original advance amount, and thereafter, Omni may hold its advance under the Engagement Agreement during these Chapter 11 Cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

11. The Debtors shall indemnify Omni under the terms of the Engagement Agreement, as modified pursuant to this Order.

12. Omni shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the

Engagement Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court.

13. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify Omni, or provide contribution or reimbursement to Omni, for any claim or expense that is either: (a) judicially determined (the determination having become final) to have arisen solely from Omni's gross negligence, willful misconduct, fraud, bad faith, self-dealing, or breach of fiduciary duty (if any) as provided in this Order; (b) for a contractual dispute in which the Debtors allege the breach of Omni's contractual obligations if this Court determines that indemnification, contribution, or reimbursement would not be permissible under applicable law; (c) of any type for which the Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re Thermadyne Holdings Corp.*, 283 B.R. 749, 756 (B.A.P. 8th Cir. 2002); or (d) settled prior to a judicial determination under (a) or (b), but determined by this Court, after notice and a hearing, to be a claim or expense for which Omni should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreement as modified by this Order.

14. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing these Chapter 11 Cases, Omni 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 Agreement (as modified by this Order), including the advancement of defense costs, Omni must file an application therefor in this Court, and the Debtors may not pay any such amounts to Omni before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by Omni for

indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify Omni. All parties in interest shall retain the right to object to any demand by Omni for indemnification, contribution, or reimbursement.

15. In the event Omni is unable to provide the services set out in this Order, Omni will immediately notify the Clerk and the Debtors' attorney and, upon approval of the Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' attorney.

16. After entry of an order terminating Omni's services, upon the closing of these Chapter 11 Cases, or for any other reason, Omni shall be responsible for archiving all proofs of claim with the Federal Archives Record Administration, if applicable, and shall be compensated by the Debtors in connection therewith.

17. The Debtors and Omni are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

18. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

19. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

20. Omni shall not cease providing claims processing services during the Chapter 11 Cases for any reason, including nonpayment, without an order of the Court.

21. In the event of any inconsistency between the Engagement Agreement, the Application and the Order, the Order shall govern.

**Signed: August 26, 2019**

  
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**DAVID R. JONES**  
**UNITED STATES BANKRUPTCY JUDGE**