



ENTERED  
12/03/2020

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

<b>In re:</b>	§	
	§	<b>Chapter 11</b>
	§	
<b>UTEX INDUSTRIES, INC., et al.,</b>	§	<b>Case No. 20-34932 (DRJ)</b>
	§	
<b>Debtors.<sup>1</sup></b>	§	<b>(Jointly Administered)</b>
	§	<b>Re: Docket No: 171</b>

**ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF  
HOULIHAN LOKEY CAPITAL, INC. AS INVESTMENT BANKER  
TO THE DEBTORS NUNC PRO TUNC TO THE PETITION DATE**

Upon consideration of the application (the “Application”)<sup>2</sup> of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an order pursuant to sections 327 and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 5002, and Local Rule 2014-1, authorizing the employment and retention of Houlihan Lokey Capital, Inc. (“Houlihan Lokey”) as its financial advisor and investment banker pursuant to the terms of the Engagement Agreement, dated as of January 27, 2020 (the “Engagement Agreement”), a copy of which is attached hereto as **Exhibit 1**; and the Court having considered the Application and the Dunayer Declaration and having considered the statements of counsel and the evidence adduced with respect to the Application at a hearing before the Court (the “Hearing”); and the Court finding that (A) the terms and conditions

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: UTEX Industries, Inc. (9867), RSH Utex Holdings, LLC (4048), Industrial Sealing Solutions Holdings Inc. (0104), UI Sealing Technologies Intermediate Holdings, Inc. (9553), UTEX Holding, Inc. (8260), Applied Rubber Technology, Inc. (1790), CAM Specialty Intermediate Holdings, Inc. (9099), CAM Specialty Products, Inc. (8342), Duraquest, Inc. (7017), Work Manufacturing, L.L.C. (5341), Energy Products LLC (8160), and Arefco Seals, Inc. (5258). The Debtors’ mailing address is 10810 Katy Freeway, Suite 100, Houston, TX 77043.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application or the Engagement Agreement, as applicable.

of Houlihan Lokey's employment set forth in the Engagement Agreement (including the Fee and Expense Structure) as modified by this Order, are reasonable as required by section 328(a) of the Bankruptcy Code; (B) Houlihan Lokey (i) does not hold or represent an interest adverse to the interest of the estate; and (ii) is a "disinterested person" as that term is defined under section 101(14) of the Bankruptcy Code; (C) the Application and the Dunayer Declaration are in full compliance with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; (D) the relief requested in the Application is in the best interests of the Debtors, their estates and creditors; and (E) notice of the Application was due and proper under the circumstances; and after due deliberation, and good and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Application is granted, as modified herein.
2. The Debtors are authorized to retain and employ Houlihan Lokey as their financial advisor and investment banker pursuant to sections 327 and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 5002, and Local Rule 2014-1, *nunc pro tunc* to the Petition Date, on the terms and conditions set forth in the Engagement Agreement and the Application, and are directed to perform their obligations set forth therein, except as expressly modified herein.
3. None of the fees payable to Houlihan Lokey shall constitute a "bonus" or fee enhancement under applicable law.
4. The compensation, fees, and expenses payable to Houlihan Lokey pursuant to the Engagement Agreement, together with the indemnification, reimbursement of expenses, and contribution obligations owed to Houlihan Lokey and any other Indemnified Party under the Engagement Agreement, shall be subject to review only pursuant to the standard of review set

forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code or any other standard of review.

5. Notwithstanding the preceding paragraph, the U.S. Trustee shall retain the right to object to the compensation, fees, and expenses to be paid to Houlihan Lokey pursuant to the Application and the Engagement Agreement, including the Monthly Fee, the Financing Fee, and the Transaction Fee, based on the reasonableness standard provided for in section 330 of the Bankruptcy Code, and the Court shall consider any such objection by the U.S. Trustee under section 330 of the Bankruptcy Code. This Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of Houlihan Lokey's compensation, fees, and expenses under the standard set forth in the preceding sentence. Accordingly, nothing in this Order or such record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee, on appeal or otherwise, with respect to the reasonableness of Houlihan Lokey's fees.

6. Houlihan Lokey shall file monthly, interim, and final fee applications for allowance of compensation for services rendered and reimbursement of expenses incurred and the Debtors are authorized to compensate and reimburse Houlihan Lokey pursuant to the terms of the Engagement Agreement, subject to the procedures set forth in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the applicable U.S. Trustee Guidelines and any other applicable orders of this Court.

7. Houlihan Lokey shall include in its monthly, interim and final fee applications, among other things, reasonably detailed time records setting forth, in a summary format, a description of the services rendered by each professional and the amount of time spent on each

date by each such individual in rendering services on behalf of the Debtors in half-hour increments, but Houlihan Lokey shall be excused from keeping time in tenth-hour increments.

8. Houlihan Lokey also intends to make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures in connection with the Application and the interim and final fee applications to be filed by Houlihan Lokey in these chapter 11 cases.

9. The Debtors shall be bound by the indemnification, contribution, reimbursement and exculpation provisions set forth in the Engagement Agreement, subject during the pendency of these cases to the following:

- a. Subject to the provisions of subparagraphs (b) and (c) below, the Debtors are authorized to indemnify, and shall indemnify, the Indemnified Parties for any claims arising from, related to, or in connection with the services to be provided by Houlihan Lokey as specified in the Application, but not for any claim arising from, related to, or in connection with Houlihan Lokey's post-petition performance of any other services (other than those in connection with the engagement), unless such post-petition services and indemnification therefor are approved by this Court;
- b. The Debtors shall have no obligation to indemnify any Indemnified Party, or provide contribution or reimbursement to any Indemnified Party, for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen from such Indemnified Party's bad faith, gross negligence, breach of fiduciary duty (if any), self-dealing, fraud, or willful misconduct, (ii) for a contractual dispute in which the Debtors allege the breach of such Indemnified Party's contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003), or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by this Court, after notice and a hearing pursuant to subparagraph (c) infra, to be a claim or expense for which such Indemnified Party is not entitled to receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreement as modified by this Order; and
- c. 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, any Indemnified Party 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, without limitation, the advancement of defense costs, such Indemnified Party must file an

application therefor in this Court, and the Debtors may not pay any such amounts to such Indemnified Party before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period during which the Court shall have jurisdiction over any request for fees and expenses by Indemnified Parties for indemnification, contribution, or reimbursement, and not as a provision limiting the duration of the Debtors' obligation to indemnify the Indemnified Parties.

10. Notwithstanding any provision in the Engagement Agreement to the contrary, the contribution obligations of the Indemnified Parties shall not be limited to the aggregate amount of fees actually received by Houlihan Lokey from the Debtors pursuant to the Engagement Agreement.

11. Notwithstanding anything to the contrary, to the extent the Debtors wish to expand the scope of Houlihan Lokey's services beyond those services set forth in the Engagement Agreement or this Order, the Debtors shall be required to seek further approval from this Court. The Debtors shall file notice of any proposed Additional Services (as defined in the Engagement Agreement) and any underlying engagement agreement with the Court and serve such notice on the U.S. Trustee, the Committee, and any party requesting notice under Bankruptcy Rule 2002. If no such party files an objection within 10 days of the Debtors filing such notice, the Additional Services and any underlying engagement agreement may be approved by the Court by further order without further notice or hearing.

12. Notwithstanding anything in the Application or the Engagement Agreement to the contrary, Houlihan Lokey shall (i) to the extent that Houlihan Lokey uses the services of independent contractors, subcontractors or employees of foreign affiliates or subsidiaries (collectively, the "**Contractors**") in these cases, Houlihan Lokey shall pass-through the cost of such Contractors to the Debtors at the same rate that Houlihan Lokey pays the Contractors, (ii) seek reimbursement for actual costs only, (iii) ensure that the Contractors are subject to the same

conflict checks as required for Houlihan Lokey, and (iv) file with the Court such disclosures required by Bankruptcy Rule 2014.

13. Notwithstanding anything to the contrary in the Engagement Letter, during the pendency of the Debtors' Chapter 11 Cases, Houlihan Lokey will not use the services of its affiliates unless the applicable affiliate files a declaration of disinterestedness with applicable disclosures of connections, if any, and such Houlihan Lokey affiliate is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and as required by Section 327(a) of the Bankruptcy Code.

14. In the event that, during the pendency of these cases, Houlihan Lokey seeks reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys, appropriately redacted to preserve applicable privileges, shall be included in Houlihan Lokey's fee applications and such invoices and time records shall be in compliance with the Bankruptcy Local Rules, and shall be subject to the U.S. Trustee 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 Houlihan Lokey shall not seek reimbursement from the Debtors' estates for any fees incurred in defending any of Houlihan Lokey's fee applications in these bankruptcy cases.

15. Houlihan Lokey's Monthly Fee shall be prorated for any month in which Houlihan Lokey is not employed for each day of the month.

16. Houlihan Lokey shall use its best efforts and will coordinate with the Debtors and its other retained professionals, not to duplicate any of the services provided to the Debtors by any of its other retained professionals.

17. Houlihan Lokey will review its files periodically during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, Houlihan Lokey will use reasonable efforts to identify such further developments and will promptly file a supplemental declaration, as required by FED. R. BANKR. P. 2014(a).

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

19. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry, notwithstanding the possible applicability of Bankruptcy Rule 6004, 7062, or 9014.

20. 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.

21. To the extent that this Order is inconsistent with the Application, Declaration, or Engagement Agreement, the terms of this Order shall govern.

22. This Court shall retain jurisdiction to construe and enforce the terms of this Order.

**Signed: December 03, 2020.**

  
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DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE