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

In re:	)	Chapter 11
ASCEND PERFORMANCE MATERIALS HOLDINGS INC., *et al.*,[1]	)	Case No. 25-90127 (CML)
Debtors.	)	(Jointly Administered)

OBJECTION OF THE AD HOC GROUP TO THE APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF DUCERA PARTNERS LLC AS INVESTMENT BANKER

The ad hoc group of lenders (collectively, the "Ad Hoc Group"), by and through its undersigned counsel, hereby submits this objection (this "Objection") to the application of the Official Committee of Unsecured Creditors (the "Committee") for an order authorizing the retention and employment of Ducera Partners LLC ("Ducera") as investment banker [Docket No. 426] (the "Ducera Application"). In support of this Objection, the Ad Hoc Group respectfully states as follows:[2]

STATEMENT

1. The Ad Hoc Group does not dispute that the Committee is entitled to professional advice.[3] But the Committee should not be entitled to engage multiple sets of financial advisors to

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at https://dm.epiq11.com/Ascend. The location of Debtor Ascend Performance Materials Holdings Inc.'s principal place of business is 1010 Travis St., Suite 900, Houston, Texas 77002.

[2] Terms used but not otherwise defined shall have the meanings ascribed to them in the Ducera Application or *Declaration of Robert Del Genio, Chief Restructuring Officer of Each of the Debtors, in Support of the Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 24], as applicable.

[3] Due mainly to the fact that the other Committee Professionals filed applications that subject their fees to section 330 review, the Ad Hoc Group does not oppose their retention. *See Omnibus Statement and Reservation of Rights of the Ad Hoc Group Regarding the Applications of the Official Committee of Unsecured Creditors for Orders Authorizing the Retention of AlixPartners, Brown Rudnick, and Parkins & Rubio* filed contemporaneously herewith.

run up a bill for duplicative services that, in the circumstances of these particular cases, are unlikely to produce a benefit to the estate commensurate with reasonable fees sought.

2. To be clear, the Ad Hoc Group unequivocally believes that they are the fulcrum creditors and as such, they make every decision prepared to bear the brunt of the costs of these cases.[4] And as noted in previous hearings and pleadings, the Ad Hoc Group provided liquidity to these Debtors at a breakneck pace, stepping up to put millions of dollars into the Company on bare-minimum notice to keep plants open and hard-working employees employed and paid. This fresh capital gave the Company the ability to continue as a going-concern by funding operations, stabilizing the business, and preventing a shutdown that would have affected employees, customers, and stakeholders alike. The Ad Hoc Group's role is not passive. As the DIP will almost certainly be equitized, they are essential partners in the Company's path forward as the expected new owners of the Company post-emergence. Importantly, the Term Loan Facility is currently trading at approximately 4.26 cents on the dollar, signifying that in addition to being the expected new owners and the largest secured creditors in these cases, the Ad Hoc Group holds one of, if not the largest unsecured claim against the Debtors' estate on account of its deficiency claim.

3. The fact that valuation is not on the agenda in connection with the Ducera Application illustrates the inherent problem with the Committee's request. If the Ad Hoc Group is correct, and general unsecured creditors are wholly out of the money, the Court is being asked today to approve the payment of millions of dollars in fees that can be triggered without any meaningful parameters, on a non-reviewable basis, despite the likely entitlement of unsecured creditors to ***no*** recovery under the Bankruptcy Code. Simply put, the Ducera Application fails to provide sufficient evidentiary justification for this request.

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[4] Bloomberg L.P., Ascend Performance Materials Operations LLC (BL3553700), trading data as of June 27, 2025, available by subscription at Bloomberg Terminal.

4. Further, given their pivotal role, the Ad Hoc Group takes offense to the notion that they could be forced to use their collateral to pay millions in fees to Ducera while also being prevented from reviewing, questioning, or objecting to those exorbitant amounts at a point in time in the future when information pertinent to their review is fully known or knowable—a right that they have with respect to all other Committee Professionals. The Committee suggests that because they characterize the relief requested as "customary,"[5] the Ducera Application can and should withstand judicial scrutiny.[6] Essentially, Ducera seeks to side-step the checks and balances built into the Bankruptcy Code, and instead, asks the Court to approve an unqualified Fee and Expense structure that would entitle them to collect millions in "success" and monthly fees if any chapter 11 plan is consummated on any terms, regardless of the effort they expend or the outcome they produce. In light of these facts, compounded by the costs associated with hiring duplicative financial advisors, reasonable terms and conditions of employment that warrant approval of the Ducera Application under section 328 should include, at a minimum, oversight by the Ad Hoc Group, who has to fund every dollar approved by the Court.

5. The Ad Hoc Group has been, and will continue to be, good partners and stewards, but they will not sit by and quietly pay the freight for unchecked professional fees. For the avoidance of doubt, the Ad Hoc Group does not consent to the use of its collateral to pay the Fee and Expense Structure as proposed. The Ad Hoc Group therefore respectfully requests that the Court examine beyond what the Committee asserts may be "customary" in uncontested or factually distinguishable cases. Instead, the reasonableness assessment should focus on the key facts at

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[5] *See Ducera Application*, at ¶ 12 ("[Investment bankers] . . . ***customarily*** charge periodic retainer fees plus additional fees that are contingent upon the occurrence of a specified type of transaction.") (emphasis added); *see also id.* at ¶ 15 ("The Fee and Expense Structure . . . is consistent with Ducera's normal and ***customary*** billing practices. . . .") (emphases added).

[6] In another instance where multiple financial advisors were hired, Ducera set a standard for providing expanded section 330 review to lenders. *See, e.g.*, *In re Superior Energy Services Inc.*, No. 20-35812 (DRJ) (Bankr. S.D. Tex. Feb. 2, 2021) [Docket No. 316], at ¶ 7 (approving a retention application for Ducera and Johnson Rice & Company, L.L.C. where each of their fee structures was subject to section 330 review by both the U.S. Trustee and an ad hoc group of noteholders).

hand: general unsecured creditors face an uncertain recovery, while the Committee Professionals seek to be automatically rewarded with millions in nonreviewable fees. Accordingly, the Court should deny the Ducera Application, or alternatively, modify the terms of the Fee and Expense Structure to be reasonable under the circumstances at hand.

BACKGROUND

6. On April 21, 2025 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On April 22, 2025, the Court entered an order [Docket No. 60] authorizing the procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b) and Bankruptcy Local Rule 1015-1.

7. On May 5, 2025, the United States Trustee for the Southern District of Texas (the "U.S. Trustee") appointed the Committee [Docket No. 223].

8. In connection with these chapter 11 cases, on June 6, 2025, the Committee filed applications seeking authority to retain Ducera and the following professionals:

(a) AlixPartners, LLP ("AlixPartners"), as financial advisor [Docket No. 424] (the "AlixPartners Application"),

(b) Brown Rudnick LLP ("Brown Rudnick"), as co-counsel [Docket No. 425], and

(c) Parkins & Rubio LLP ("P&R"), as co-counsel [Docket No. 427] (together with AlixPartners and Brown Rudnick, the "Committee Professionals").

9. The deadline to object to the Committee Professionals' retention applications is June 27, 2025. The Ducera Application, in pertinent part, requests approval of the following Fee and Expense Structure:

(a) "A nonrefundable monthly cash fee of $175,000, payable in advance (the "Monthly Advisory Fee") or as otherwise set forth in a Court order. The Monthly Advisory

Fee shall commence as of the Effective Date. The first Monthly Advisory Fee and any additional Monthly Advisory Fees accrued from the Effective Date through the entry of an order of the Court approving Ducera's retention by the Committee shall be payable upon the entry of such order, subject to any other applicable orders of the Court. The Monthly Advisory Fee shall be payable until the earlier of: (1) the consummation of a Restructuring or (2) the termination of Ducera's services by the Committee; *plus*

(b) A restructuring fee of $3,000,000 that shall be due and payable upon consummation of any Restructuring (the "Restructuring Fee").[7]

(c) The Company shall receive a discount of $87,500 per month against the Restructuring Fee for each month commencing after payment of the sixth (6th) full Monthly Advisory Fee (the "Ducera Discount"); *provided*, *however*, that the Ducera Discount shall only apply if any and all outstanding invoices have been paid before, or in connection with, the consummation of the Restructuring."

Ducera Application, at ¶ 13.

(d) A "Tail Period" of twelve months, during which time, even after Ducera's termination, the full amount of the above fees remains payable. *Id.* at ¶ 13(b), n.7; Exhibit B, at ¶ 8(b), n.4.

[7] For purposes of the Engagement Letter, a Restructuring shall be deemed to have been consummated upon: (a) in the case of a Chapter 11 Plan, the date that the Chapter 11 Plan becomes effective in accordance with the terms and conditions thereof; or (b) in the case of a 363 Sale Transaction, the closing of such 363 Sale Transaction. For avoidance of doubt, the Restructuring Fee shall only be payable one time, whether during the Term or the Tail Period.

OBJECTION

I. Ducera's Request for Approval under Section 328 is Unreasonable, Premature, and Lacks Appropriate Evidentiary Justification.

10. The Committee seeks approval of Ducera's retention and compensation structure under section 328(a) of the Bankruptcy Code, which allows a committee to seek court approval to retain a professional "on any ***reasonable*** terms and conditions of employment." 11 U.S.C. § 328(a) (emphasis added). The Committee bears the burden to prove—by a preponderance of the evidence, not by conclusory statements—that the proposed retention meets the requirements of section 328. *See In re Energy Partners, Ltd.*, 409 B.R. 211, 224 (Bankr. S.D. Tex. 2009).

11. In assessing reasonableness under section 328, courts may consider whether: (a) the terms reflect market terms; (b) the amount of fees are reasonable given the size and circumstances of the case; (c) the retention, as proposed, is in the best interests of the estate; (d) creditors oppose the retention or the proposed fees; and (e) the parties engaged in an arm's length negotiation. *See Energy Partners*, 409 B.R. at 226 (quoting *In re Insilco Techs., Inc.*, 291 B.R. 628, 633 (Bankr. D. Del. 2003)); *see also In re Thermadyne Holdings Corp.*, 283 B.R. 749, 756 (8th Cir. B.A.P. 2002) ("11 U.S.C. § 328(a) requires the bankruptcy judge to find what is reasonable under the circumstances and such a finding can only be made on a case by case basis."). The Bankruptcy Code is clear that these conditions of employment can take a variety of forms—payment can be through a retainer, on an hourly basis, or through a contingent fee—but in any event, the Court needs to determine that the employment of a professional is on "terms and conditions that the Court finds necessary to satisfy the requirement of reasonableness." *In re Federal Mogul-Global, Inc.*, 348 F.3d 390, 397 (3d Cir. 2003).

12. The assessment of reasonableness under section 328 is made prospectively, at the time a retention application is filed, which differentiates section 328 from the alternative option

for a professional to obtain payment of fees under section 330. Once a court pre-approves a fee structure under section 328, "professionals largely lock in how they will be paid" and other parties lose the opportunity to review such fees for reasonableness after the fact. *In re Frontier Commc'ns Corp.*, 623 B.R. 358, 362 (Bankr. S.D.N.Y. 2020). It is for this reason that courts do not take section 328(a) applications lightly, since once a fee is approved, "the court cannot on the submission of the final fee application instead approve a 'reasonable' fee under [section] 330(a)" barring extremely rare circumstances. *In re Tex. Sec., Inc.*, 218 F.3d 443, 445 (5th Cir. 2000).[8] Section 330, on the other hand, looks backwards at the "actual, necessary services" rendered by a professional as well as "the nature, the extent, and the value of such services," and enumerates a list of factors relevant to a court's determination of the reasonableness of fees. 11 U.S.C. § 330(a).

13. The Ducera Application seeks approval of its Fee and Expense Structure subject only to section 328 because Ducera does not want their work to be done under the shadow of what they assert, generically, would be unreasonable "uncertainty" under the section 330 standard.[9] *See Ducera Application*, at ¶¶ 12, 27. However, the request for section 328 approval of Ducera's compensation structure is simply an endeavor to evade appropriate review at a more appropriate time.[10] The Committee does not cite to any contested case where a court accounted for this timing issue, analyzed it in connection with the inherent uncertainty that exists when a professional is seeking employment by a committee (versus a debtor or trustee)—and, importantly, by a

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[8] *See also In re High Voltage Eng'g Corp*., 311 B.R. 320, 333 (Bankr. D. Mass. 2004) ("[A] bankruptcy court has an obligation to determine the reasonableness of terms and conditions before authorizing the employment of professionals under [section] 328(a) and may eliminate, modify, or impose additional terms and conditions to satisfy the requirement of reasonableness.").

[9] Both Bankruptcy Code sections 328 and 330 undertake an examination into the "reasonableness" of the requested fees, albeit at different points in time. It is for this reason that some courts have conclusively determined that the factors enumerated in section 330 can be instructive in evaluating the reasonableness of retention under section 328(a). *See Federal Mogul-Global*, 348 F.3d at 407–08.

[10] If, instead, the Ducera Application were subject to section 330 review *en toto*, then the Court could assess the Fee and Expense Structure at the appropriate time and in a less murky context to determine whether the requested fees are "commensurate with the complexity, importance, and nature of the problem, issue, or task addressed," and parties could then make an inquiry into "whether the services were . . . beneficial at the time at which the service was rendered." 11 U.S.C. § 330(a)(3)(C)–(D).

constituency that is, or may be, entirely out of the money—and balanced these facts (which are present in this case) in assessing a section 328 application.

14. In accordance with the DIP Facilities Milestones, all parties are expeditiously moving towards negotiating a plan that will likely consensually equitize the Company's secured debt, but no disclosure statement exhibits or plan has yet been filed. Therefore, any recovery to general unsecured creditors is speculative, at best. That speculation is enough to call the reasonableness of Ducera's Fee and Expense Structure into question. Courts have found fees unreasonable, and imposed a modified fee structure on professionals, when a contingent fee "simply seemed too high in relation to the size of the client's recovery and therefore not in the best interests of the estate and parties in interest." *Frontier Commc'ns*, 623 B.R. at 364; *see, e.g.*, *In re UDC Homes, Inc.*, 203 B.R. 218, 222–23 (Bankr. D. Del. 1996).

15. Further, as the Committee Professionals are aware, there is no contemplated sale of assets in these cases that suffices as an exigency to retain an investment banker. To the extent that any rationale for such retention has been offered by the Committee, it is only to provide services surrounding the Company's valuation—an exercise that, if Ducera will contribute to it at all, is months away and does not justify prospective approval of fees, retroactive to early May. *See Ducera Application*, at ¶ 6. Assessing Ducera's requested compensation structure through this lens, both the Monthly Advisory Fee and the Restructuring Fee fail the test of reasonableness.

16. Moreover, the request for section 328 approval of a $3 million fee without any guardrails is particularly unreasonable in these cases where the Debtors with such scarce resources would be required to pay such a fee. There is no threshold for Ducera's expected effort, no specificity about its exact role in the plan negotiation process, no benchmark requiring any meaningful recovery to general unsecured creditors, or even a requirement that any recovery to

general unsecured creditors be in excess of the fees awarded to the Committee Professionals. *See Ducera Application*, at ¶ 13(b). Ducera's success fee is simply payable if any chapter 11 plan is consummated on any terms, regardless of whether there is a benefit to the estate at all. *See id*. As a result, the Ad Hoc Group should, at bare minimum, be entitled to the same review rights as the U.S. Trustee under section 330.

17. The unreasonableness of the Committee's request for prospective approval under section 328 is further compounded by the inclusion of the success fee in the Tail Period. As drafted, for a period of twelve months following the termination of Ducera, the estate would remain bound to pay all of Ducera's fees, irrespective of whether the Committee decides to hire a replacement advisor that may also require a success fee in exchange for their employment. *See id.*, at ¶ 13(b), n.7; Exhibit B, at ¶ 8(b), n.4. While a Tail Period itself is not unreasonable, using this type of provision to bind the estate to pay a $3 million fee to a Committee Professional that has been terminated is not a reasonable use of scarce estate resources. *See id*.

18. Tellingly, there is nothing in the Ducera Application, the corresponding declaration, or elsewhere in the record, that demonstrates a clear need for Ducera's services starting in early May. The Court, in its role as a gatekeeper, must have a sufficiently strong record when deciding whether to approve a retention application under section 328(a). *See High Voltage Eng'g*, 311 B.R. at 333 (holding that a committee seeking to retain the professional must present evidence that the terms and conditions of employment are reasonable, and not conclusory statements). The Ducera Application fails to provide any facts in adequate detail surrounding how Ducera was selected, and whether the engagement was a result of a rigorous process and an arm's length negotiation. It is unknown what, if anything, was said to the Committee in exchange for its agreement to the Fee and Expense Structure in these cases where there is no sale process and

general unsecured creditors sit behind over $2 billion of debt. The sole basis for Ducera's compensation structure derives from generalized, conclusory statements (including that the fees and expenses are "comparable to compensation arrangements entered into by Ducera and other comparable firms rendering similar services" and are "reasonable, market-based and merited by Ducera's expertise"). *Ducera Application*, at ¶ 14. These statements do not rise to the appropriate level of sufficient evidentiary, particularly in light of the requisite scrutiny under section 328.

19. No other Committee Professional seeks a similar contingent fee at this time, and the record is silent as to why Ducera should be uniquely exempt from the same compensation arrangements as the other Committee Professionals. Given these facts, the Committee has not met its burden to demonstrate the reasonable scope of Ducera's proposed retention, including why it is necessary, how it may benefit the estate, and the projected cost. *See High Voltage Eng'g*, 311 B.R. at 330; *In re Computer Learning Centers, Inc.*, 272 B.R. 897, 903 (Bankr. E.D. Va. 2001).

II. The Retention of Ducera is Duplicative.

20. The Ducera Application should also be denied because of the less common situation in which the Committee seeks to simultaneously retain both an investment banker and a financial advisor. Although not unheard of that a committee may need multiple professionals, a dual engagement is only appropriate when each has a meaningful and distinct role within a case. At the very least, an application "must explain how the investment banker/advisor will eliminate, or at least reduce, the duplication of effort . . . where there are armies of professionals apparently doing the same thing as the investment banker/advisor." *In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. 13, 27 (Bankr. S.D.N.Y. 1991).[11] Although the Ducera Application makes reference

[11] *See also In re Wang Laboratories Inc*., 143 B.R. 794, 795 (Bankr. D. Mass. 1992) ("Even if Debtor could gain some potential benefit from the proposed services of [the investment banker] that are not redundant to the services of the other employed professionals, that benefit would be severely offset by the tremendous expense to the estate of hiring [the investment banker].").

to the avoidance of duplicate efforts, such statements are yet again non-specific and conclusory. *See Ducera Application*, at ¶ 11. The Ad Hoc Group has been concerned about the possibility of duplication from the moment both financial advisors were selected, and the scope of services proposed in their respective retention applications does little to assuage those concerns, particularly since either firm is sophisticated enough to provide the proposed services outlined in the applications on a standalone basis. *See id.*, at ¶ 10(a); AlixPartners Application, at ¶ 14.

21. The concern about duplicate efforts is especially acute here when professional spend is already expected to rise to a shocking magnitude: Ducera seeks pre-approval of a flat monthly fee that builds on top of AlixPartners' hourly billing (which, by the Committee's own estimate, is expected to be upwards of $1 million per month), even though any potential, non-duplicative work for an investment banker, if any at all, is still months away. Although subjecting Ducera's Fee and Expense Structure to section 330 review would alleviate some of the Ad Hoc Group's concerns, the Ducera Application fails to establish the need for both sets of financial advisors, or to ensure a clear lack of duplication between their work, rendering Ducera's expensive, potentially pre-approved compensation structure inappropriate and unreasonable.

22. Lastly, and for the avoidance of doubt, the Debtors' estate should not bear the costs of reimbursement for any Committee Professionals' efforts in defending their own retention, or later, fee applications. *See Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 122 (2015) (holding that "[t]ime spent litigating a fee application . . . cannot be fairly described as 'labor performed for'—let alone 'disinterested service to'—[the estate]" that falls under reasonable compensation for services rendered); *In re Boomerang Tube, Inc.*, 548 B.R. 69, 75 (Bankr. D. Del. 2016) ("The fee defense provisions are not reasonable terms for the employment of Committee Counsel because they do not involve any services for the Committee. Rather, they are for services performed by

Committee Counsel only for their own interests."). Any order approving the Ducera Application should be clear that this category of fees and expenses is non-reimbursable against the estate.

Conclusion

Given the absence of supporting evidence in the Ducera Application, the record in front of the Court is insufficient to justify granting the relief requested. No evidence was submitted into the record as to why the Committee believes that a monthly fee and an unconditional multi-million-dollar success fee are in the best interests of the Debtors' estate in these particular cases, or how the estate is adequately protected from multiple (and expensive) Committee Professionals whose services admittedly overlap.

WHEREFORE, the Ad Hoc Group respectfully requests that the Court deny the Ducera Application, or as a lesser alternative, approve it solely subject to section 330 of the Bankruptcy Code.

Dated: June 27, 2025
Houston, Texas

Respectfully submitted,

/s/ Tom A. Howley
Tom A. Howley (Texas Bar No. 24010115)
Eric Terry (Texas Bar No. 00794729)
HOWLEY LAW PLLC
700 Louisiana Street, Suite 4545
Houston, TX 77002
Telephone: 713-333-9125
Email: tom@howley-law.com
eric@howley-law.com

Attorneys for the Ad Hoc Group

Certificate of Service

I certify that on June 27, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Tom A. Howley
Tom Howley