

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

In re:

Biolase, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-12245 (KBO)

(Jointly Administered)

Re: Docket No. 74

**ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF
B. RILEY ADVISORY SERVICES AS FINANCIAL ADVISOR TO
THE DEBTORS EFFECTIVE AS OF THE PETITION DATE**

Upon the application (the “Application”)² of the Debtors for entry of an order pursuant to sections 327(a), 328, and 1107(b) of title 11 of the United States Code (the “Bankruptcy Code”), rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2014-1 and 2016-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) authorizing the retention and employment of B. Riley as financial advisor to the Debtors effective as of the Petition Date and pursuant to the engagement agreement attached to the Application as **Exhibit B** (the “Engagement Agreement”), all as more fully set forth in the Application; and upon consideration of the *Declaration of J. Michael Issa in Support of the Debtors’ Application for Entry of Order Authorizing the Retention and Employment of B. Riley Advisory Services as Financial Advisor to the Debtors Effective as of the Petition Date* (the “Issa Declaration”) submitted in support of the Application; and this Court having reviewed the Application and the Issa Declaration; and this

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Biolase, Inc. (2441); BL Acquisition Corp. (4140); BL Acquisition II, Inc. (6022); and Model Dental Office, LLC (9372). The Debtors’ headquarters are located at 27042 Towne Centre Drive, Suite 270, Foothill Ranch, CA 92610-2811.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Application.

Court having found that (a) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; (b) this is a core proceeding pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b); (c) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) due and proper notice of the Application was sufficient under the circumstances and that no other or further notice is necessary; and this Court being satisfied that B. Riley is “disinterested” as such term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and as required under section 327(a) of the Bankruptcy Code; and that B. Riley does not hold or represent an interest adverse to the Debtors’ estates; and this Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and no objections having been filed to the Application; and it appearing that the relief requested in the Application is in the best interests of the Debtors, their estates, creditors, and other parties-in-interest; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Application is **GRANTED** as set forth herein.
2. Pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016-1, the Debtors are authorized to retain and employ B. Riley as financial advisor to the Debtors in accordance with the terms and conditions of the Engagement Agreement, effective as of the Petition Date.
3. The terms of the Engagement Agreement are approved in all respects, as modified by this Order.
4. B. Riley is hereby authorized to render the following professional services:

- a. assisting the Debtors with financial projections and cash management;
- b. providing financial advice and assistance in connection with asset sale transactions;
- c. collecting data required for various motions and proposed orders, including debtor in possession financing motions and proposed orders;
- d. preparing or supervising the preparation of reports required by federal and local bankruptcy statutes and rules, such as the statement of financial affairs, schedule of assets and liabilities, monthly operating reports, and other reports;
- e. reviewing, evaluating, and analyzing financial ramifications of proposed transactions for which the Debtors may seek court approval;
- f. assisting with the development of a chapter 11 plan and the confirmation process;
- g. submitting reports and testifying before the court, as may be required, on behalf the Debtors; and
- h. performing such other duties or tasks that fall within the customary responsibilities of a debtor in possession's financial advisor as requested by the Debtors.

5. B. Riley shall apply for compensation in accordance with and will file fee applications for allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable guidelines or orders of this Court.

6. B. Riley is authorized without further order of the Court to apply amounts from the prepetition retainer to compensate and reimburse B. Riley for fees and expenses incurred on or prior to the Petition Date consistent with its ordinary course billing practices. At the conclusion of B. Riley's engagement by the Debtors, if any amount of the prepetition retainer held by B. Riley is in excess of the amount of B. Riley's outstanding estimated fees, expenses, and costs, then B. Riley will pay the Debtors the amount by which the prepetition retainer exceeds such fees, expenses, and costs.

7. B. Riley shall provide ten (10) business days' notice to the Debtors, the U.S. Trustee, and any official committee prior to any increases in B. Riley's rates for any individual providing services in these chapter 11 cases and shall file such notice with the Court. The U.S. Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in section 330 of the Bankruptcy Code, and this Court retains the right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

8. To the extent B. Riley uses the services of independent contractors (the "Contractors") in these chapter 11 cases, B. Riley shall: (a) pass through the cost of such Contractors to the Debtors at the same rate that B. Riley pays the Contractors; (b) seek reimbursement for actual costs only; (c) ensure the Contractors are subject to the same conflict checks as required for B. Riley; and (d) file with the Court such disclosures required by Bankruptcy Rule 2014.

9. B. Riley (including any employees or affiliated persons) (collectively, the "Indemnified Persons," and each individually, an "Indemnified Person") shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services, unless such services and the indemnification, contribution or reimbursement therefor are approved by this Court.

10. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify the Indemnified Persons, or provide contribution or reimbursement to the Indemnified Persons, for any claim or expense that is either: (a) judicially determined (the determination having become final) to have arisen from an Indemnified Person's gross negligence, willful misconduct or fraud; (b) for a contractual dispute in which the Debtors allege the breach of an Indemnified Person's contractual obligations unless this Court determines

that indemnification, contribution or reimbursement would be permissible pursuant to applicable law; or (c) settled before 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 an Indemnified Person should not receive indemnity, contribution or reimbursement under the terms of the Engagement Agreement as modified by this Order.

11. 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) and (ii) the entry of an order closing these chapter 11 cases, an Indemnified Person believes that he or she 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, the Indemnified Person must file an application therefor in this Court, and the Debtors may not pay any such amounts to the Indemnified Person 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 this Court shall have jurisdiction over any request for fees and expenses by any Indemnified Person 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, the Indemnified Persons. All parties in interest shall retain the right to object to any demand by any Indemnified Person for indemnification, contribution and/or reimbursement.

12. Any limitation of liability pursuant to the terms and conditions set forth in the Engagement Agreement, or otherwise, are hereby eliminated for the duration of these chapter 11 cases.

13. 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.

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

15. Notwithstanding anything to the contrary in the Engagement Agreement, B. Riley shall not unilaterally terminate its engagement thereunder absent prior approval of the Court.

16. To the extent there is any inconsistency between this Order and the Application, this Order shall govern.

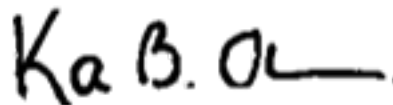
17. Notice of the Application is deemed to be good and sufficient notice of such Application, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

18. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon its entry.

19. The Debtors and B. Riley are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

20. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: October 25th, 2024
Wilmington, Delaware


KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE