

CITATION: Allied Systems Holdings, Inc. (Re), 2012 ONSC 4389  
COURT FILE NO.: 12-CV-9757-00CL  
DATE: 20120725

**SUPERIOR COURT OF JUSTICE – ONTARIO  
(COMMERCIAL LIST)**

**RE: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED**

**APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED.**

**AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS (CANADA) COMPANY, AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO, Applicant**

**BEFORE: MORAWETZ J.**

**COUNSEL: J. Stam and V. Djuric, for the Applicant**

**S. Golick and A. Cobb, for Yucaipa**

**J. D. Leslie, for Ford Motor Company**

**B. Empey and L. Willis, for Black Diamond**

**T. Reye and E. Cobb, for Duff and Phelps, Canada Restructuring Inc.,  
Information Officer**

**HEARD &  
RELEASED: JUNE 13, 2012**

**ENDORSEMENT**

[1] Counsel to the Applicant advised that the U.S. Bankruptcy Court in Delaware granted the First Day Orders with minor changes. His Honor Judge Sontchi presided and counsel to the Applicant noted that Judge Sontchi recognized that the CCAA Part IV proceedings were taking place.

[2] Having reviewed the record and hearing submissions, I am satisfied that it is appropriate to recognize the Foreign Orders, as defined in the proposed Order. I am also satisfied that it is appropriate to appoint an Information Officer in these proceedings and Duff & Phelps is so appointed.

[3] The proposed protections in the form of a stay and the other protections set out at paragraphs 6 – 11 are also appropriate and are granted.

[4] The provisions relating to the Information Officer at 12-19 are also appropriate.

[5] With respect to the provisions relating to Interim Financing, I have considered the applicable tests for DIP Financing in the CCAA, which have also been referenced in the Applicant's factum. The DIP Charge has the effect of priming the First and Second Lien Creditors, who do not object.

[6] The DIP Financing Agreement requires the Canadian Companies to guarantee the financing. It is noted that the Canadian Companies have already guaranteed the First and Second Lien Creditors. Further, the Record establishes that Allied does not have sufficient cash flow to continue its restructuring efforts and in addition, the Canadian Companies do not have the ability to exist without the support of the Chapter 11 Debtors.

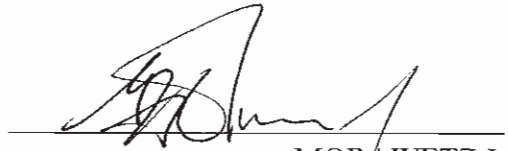
[7] It is also noted that the approval sought today is in respect of a \$20 million facility with an interim cap of \$10 million. When these factors are taken into consideration, it seems to me, that the interim DIP is necessary at this time and that no creditor will be materially prejudiced by the approval of the interim DIP. The alternative would, in all likelihood, be less attractive to the creditors.

[8] I do note the proposed 21A(b) in the Order, which provides, in certain circumstances, that the DIP Lender can exercise certain rights and remedies under the Financing Order and the DIP Agreement without further Order or application to the Court.

[9] The provision is not generally included in approval Orders granted by this court, where the custom is to require court involvement if such remedies are exercised.

[10] In the circumstances of this case, however, the court is prepared to accept the provision, on the basis that the situation is such that Allied requires immediate funding. However, it is the expectation of this Court that, notwithstanding the literal wording of 21A(b), the Information Officer would promptly bring to this Court's attention any proposed exercise of rights by the DIP Lender. This could be done at a 9:30 appointment.

[11] Finally, it is recognized that the DIP Lender will be advancing funds almost immediately. Without such advances, there appears to be no hope of a restructuring. Given the cooperation of parties to date and the priority granted to the DIP Lender today, it is fully expected that all parties affected by this Order will respect the priority accorded to the DIP Lender for any advances made by the DIP Lender up to and including the date on which this Order may be varied or modified.



MORAWETZ J.

**Date:** July 25, 2012