



Court File No.: 12- CV-9757-00CL

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

THE HONOURABLE)	MONDAY, THE 22 ND DAY
)	
MR. JUSTICE MORAWETZ)	OF APRIL, 2013

**IN THE MATTER 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,**

**AXIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON
SCHEDULE "A" HERETO**

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

ORDER

THIS MOTION, made by Allied Systems Holdings, Inc. ("**Allied US**") in its capacity as the foreign representative (the "**Foreign Representative**") of Allied US, Allied Systems (Canada) Company ("**Allied Canada**"), Axis Canada Company and those other companies listed on Schedule "A" hereto (the "**Chapter 11 Debtors**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Motion Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the

1. Notice of motion dated July 25, 2012 (the “**Original D&O Notice of Motion**”),
2. the affidavit of John Blount sworn July 25, 2012 (the “**Blount Affidavit**”),
3. the second report dated July 26, 2012 (the “**Second Report**”) of Duff & Phelps Canada Restructuring Inc. in its capacity as information officer (the “**Information Officer**”),
4. the amended and restated notice of motion amending the Original Notice of Motion dated April 11, 2013 (the “**Amended and Restated Notice of Motion**”),
5. the affidavit of Scott Macaulay sworn April 11, 2013 (the “**Macaulay Affidavit**”),
6. the fifth report of the Information Officer (the “**Fifth Report**”),

and on hearing the submissions of counsel for:

1. the Foreign Representative,
2. the Information Officer,
3. Yucaipa American Alliance Fund II, LLC, Yucaipa Leveraged Finance, LLC, CB Investments, LLC, Yucaipa American Alliance Fund I, L.P., Yucaipa American Alliance Fund II, L.P.; Yucaipa American Alliance (Parallel) Fund I, L.P.; Yucaipa American Alliance (Parallel) Fund II, L.P.,
4. Black Diamond CLO 2005-1 Ltd., BDCM Opportunity Fund II, LP and Spectrum Investment Partners LP (collectively “**Black Diamond/Spectrum**”),
5. the National Automobile, Aerospace, Transportation and General Workers Union of Canada (the “**CAW**”), consenting and
6. those other parties present, no one else appearing although duly served as appears from the affidavit of service of Katie Parent sworn April 12, 2013,

SERVICE

1. THIS COURT ORDERS that the time for service of the Original Motion Record, the Second Report, the Amended and Restated Motion Record and the Fifth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that capitalized terms used herein and not otherwise defined have the meaning given to them in the Macaulay Affidavit.

RECOGNITION OF FOREIGN APPROVAL ORDER

3. THIS COURT ORDERS that the order of the United States Bankruptcy Court for the District of Delaware dated April 11, 2013 approving, among other things, the CAW Settlement Agreement (“**US Approval Order**”) is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA. A copy of the US Approval Order is attached as Schedule “B” hereto.

DIRECTORS’ CHARGE

4. THIS COURT ORDERS that Allied Canada shall indemnify its current and future directors (the “**Directors**”, and individually, a “**Director**”):

- (a) with respect to any obligation or liability of a Director to pay the CLC Severance to the CAW Laid Off Employees up to a maximum amount of \$1.4 million (“**CAW Employee Severance Obligations**”); and
- (b) with respect to any obligation or liability of a Director for obligations for termination or severance pay required to be paid pursuant to the CLC upon termination of any employees who are not members of a union and who were active employees on June 10, 2012 (“**Non-Bargaining Employee Obligations**”) up to a maximum amount of \$570,000,

except to the extent that, with respect to any Director, the obligation or liability was incurred as a result of the Director's gross negligence or wilful misconduct.

5. THIS COURT ORDERS that the Directors shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the property of Allied Canada, which charge shall not exceed an aggregate amount of:

- (a) \$1.4 million in respect of the CAW Employee Severance Obligations; and
- (b) \$570,000 in respect of the Non-Bargaining Employee Obligations,

as security for the indemnity provided in paragraph 4 of this Order and subject to paragraph 8 of this Order. The Directors' Charge shall have the priority set out in paragraphs 22 to 24 of the Amended and Restated Supplemental Order, as such Supplemental Order is amended by this Order.

6. THIS COURT ORDERS that the Directors' Charge with respect to the CAW Employee Severance Obligations shall apply in these proceedings and any subsequent bankruptcy or receivership and shall be reduced as any amounts set out in paragraph 4 are paid by an amount equal to each such payment made.

7. THIS COURT ORDERS that the Directors' Charge with respect to the Non-Bargaining Employee Obligations shall apply in these proceedings and any subsequent bankruptcy or receivership and shall be reduced as any amounts set out in paragraph 4 are paid by an amount equal to each such payment made.

8. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 4 of this Order and, for greater certainty, before any Person seeks to

rely upon the Directors' Charge, coverage under existing insurance policies shall have been sought and exhausted first.

VALIDITY AND PRIORITY OF CHARGES

9. THIS COURT ORDERS that paragraphs 22 through 27 of the Supplemental Order are hereby deleted in their entirety and replaced with the following:

“22. THIS COURT ORDERS that the priorities of the Administration Charge, the Directors' Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$600,000);

Second – Directors' Charge (as defined in the Order of this Court made on April 22nd, 2013) (“**D&O Order**”) with respect only to CAW Employee Severance Obligations (as defined in the D&O Order) (to the maximum amount of \$1.4 million);

Third – DIP Lender's Charge; and

Fourth – Directors' Charge (as defined in the D&O Order) with respect only to Non-Bargaining Employee Obligations (as defined in the D&O Order) (to the maximum amount of \$570,000).

23. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, the Directors' Charge or the DIP Lender's Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

24. THIS COURT ORDERS that:

(a) “**Encumbrances**” means any security interests, trusts, liens, charges and encumbrances (collectively, “**Encumbrances**”) in favour of any Person;

(b) each of the Charges shall constitute a charge on the Property in Canada (with the exception of the Directors' Charge which shall constitute a charge on the property of Allied Canada) and such Charges shall rank in priority to all Encumbrances other than:

(i) Encumbrances (if any) in favour of any Person that are valid, perfected (by registration or possession), non-avoidable and are senior to Encumbrances securing the First Lien Credit Facility as of the date of the Final Financing Order, as defined in the Order of this Court on July 16, 2012); and

(ii) the Carve-Out (as defined in such Final Financing Order).

25. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Chapter 11 Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Administration Charge, the Directors' Charge or the DIP Lender's Charge, unless the Chapter 11 Debtors also obtain the prior written consent of the Information Officer and the DIP Lender.

26. THIS COURT ORDERS that the Administration Charge, the Directors' Charge and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any Chapter 11 Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by a Chapter 11 Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Chapter 11 Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

27. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Chapter 11 Debtor's interest in such real property leases.”

RELEASE

10. THIS COURT ORDERS that any recovery with respect to any demand or claim, asserted or otherwise made by the CAW or any of their respective members (who are current employees of Allied Canada) against Allied Canada for payment of any amounts in respect of termination or severance whether owing pursuant to the CLC, a collective agreement, other written agreement or notice or otherwise (a “**CAW Claim**”) that is also asserted against any director (whether past, present or future, actual or deemed) of Allied Canada or any affiliate of Allied Canada (the “**Releasees**”), and which cannot be recovered from Allied Canada shall be limited to proceeds of existing and applicable directors’ and officer’s insurance (“**Insurance Proceeds**”) and that any other CAW Claim against the Releasees whether known, unknown, matured or unmatured, direct, indirect, foreseen, unforeseen, existing or hereafter arising be and is hereby forever released and discharged.

GENERAL

11. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Chapter 11 Debtors, the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Chapter 11 Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

12. THIS COURT ORDERS that each of the Chapter 11 Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 22 2013
MB

SCHEDULE A – CHAPTER 11 DEBTORS

Allied Systems Holdings, Inc.

Allied Automotive Group, Inc.

Allied Freight Broker LLC

Allied Systems (Canada) Company

Allied Systems, Ltd. (L.P.)

Axis Areta, LLC

Axis Canada Company

Axis Group, Inc.

Commercial Carriers, Inc.

CT Services, Inc.

Cordin Transport LLC

F.J. Boutell Driveway LLC

GACS Incorporated

Logistic Systems, LLC

Logistic Technology, LLC

QAT, Inc.

RMX LLC

Transport Support LLC

Terminal Services LLC

SCHEDULE B – US APPROVAL ORDER

Attached.

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

In re:

ALLIED SYSTEMS HOLDINGS, INC., et al.,¹

Debtors.

Chapter 11

Case No. 12-11564 (CSS)

(Jointly Administered)

Re: Docket Nos. 1020 & 1078

**ORDER (I) APPROVING CAW SETTLEMENT AGREEMENT AND (II)
GRANTING AUTHORITY TO MOVE THE ONTARIO SUPERIOR
COURT OF JUSTICE TO ESTABLISH DIRECTORS' CHARGE ON
PROPERTY OF ALLIED SYSTEMS (CANADA) COMPANY**

Upon consideration of *Debtors' Motion for Approval of CAW Settlement Agreement and for Authority to Move the Ontario Superior Court of Justice to Establish a Directors' Charge on Property of Allied Systems (Canada) Company* (the "**Motion**"), filed by the above-captioned debtors and debtors in possession (collectively "**Allied**" or the "**Debtors**"), the Court having determined after due deliberation that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; that venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; that this is a core proceeding pursuant to 28 U.S.C. § 157(b); that due and proper notice of the Motion and the hearing thereon has been given; and that granting the relief sought in the Motion is in the best interest of the Debtors, their estates, creditors and all parties in interest; and that the legal and factual bases set forth in the Motion establish cause for granting the relief sought in the Motion,

¹ The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (875688228); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveaway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The CAW Settlement Agreement ² between Allied Canada and CAW is hereby approved.
3. Allied is hereby authorized to move the Ontario Superior Court of Justice to enter an order (the "**Canadian Approval Order**") recognizing this U.S. Approval Order and establishing the Directors' Charge, as described in the CAW Settlement Agreement, with respect to CAW Employee Severance Obligations, and as described in this Motion, with respect to Non-Bargaining CLC Severance Obligations.
4. On entry of the Canadian Approval Order and the establishment of the Directors' Charge, as provided in paragraph 2 of the CAW Settlement Agreement, Allied Canada's obligation to pay CAW Employees Severance Obligations shall be an administrative expense in the Chapter 11 Case of Allied Canada.
5. On entry of the Canadian Approval Order and the establishment of the Directors' Charge, as provided in paragraph 6 of the CAW Settlement Agreement, any recovery with respect to a CAW Claim asserted against any director (whether past, present, future, actual or deemed of Allied Canada or any affiliate of Allied Canada (the "**Releasees**")), which cannot be recovered from Allied Canada shall be limited to any proceeds that the CAW may recover from the Director's Policies, and any other CAW Claim against the Releasees, whether known or unknown, matured or unmatured, direct, indirect, foreseen, unforeseen, existing or hereafter arising, shall be forever released and discharge.

² Capitalized terms defined solely in the Motion and used in this Order shall have the meaning ascribed to them in the Motion. Capitalized terms defined in the CAW Settlement Agreement, whether or not also defined in the Motion, shall have the meaning that is ascribed to them in the CAW Settlement Agreement.

6. This Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: April 11, 2013
Wilmington, Delaware



THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

IN THE MATTER 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, AXIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO

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

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto, Ontario, Canada

ORDER
(Director Settlement)

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