

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

**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**

**AFFIDAVIT OF SCOTT MACAULAY
(sworn June 11, 2012)**

**I, Scott Macaulay, of the City of Atlanta in the State of Georgia, MAKE OATH AND
SAY:**

1. I am the senior vice-president and chief financial officer of Allied Systems Holdings, Inc. ("**Allied Systems US**") as well as the vice-president and treasurer of Allied Systems (Canada) Company ("**Allied Systems Canada**") and the treasurer of Axis Canada Company ("**Axis Canada**"). Overall, I have been an employee of Allied for the last fourteen (14) years. As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.
2. This Affidavit is sworn in support of an application by Allied Systems US in its capacity as foreign representative of Allied Systems US, Allied Systems Canada, Axis Canada and

those other companies listed on Schedule "A" hereto (collectively, "**Allied**", the "**Allied Group**" or the "**Chapter 11 Debtors**") for:

- (a) recognition of the Chapter 11 Cases (defined below) as foreign main proceedings pursuant to Part IV of the *Companies' Creditors Arrangement Act*, 1985, s.C-36, as amended (the "**CCAA**");
- (b) recognition of certain First Day Orders (defined below);
- (c) the appointment of Duff & Phelps Canada Restructuring Inc. ("**Duff Canada**") as information officer (the "**Proposed Information Officer**");
- (d) the granting of the Administrative Charge (defined below); and
- (e) the granting of the DIP Charge (defined below).

3. All dollar references herein are in US dollars unless otherwise specified.

BACKGROUND

- 4. On June 10, 2012, Allied Systems US and Allied Systems, Ltd. (L.P.) ("**ASL**") each consented to the petition (the "**Involuntary Petitions**") for relief filed against each of them pursuant to chapter 11 of title 11 ("**Chapter 11**") of the United States Code (the "**Bankruptcy Code**") with the United States Bankruptcy Court for the District of Delaware (the "**US Court**"). On the same day the balance of the Chapter 11 Debtors each filed voluntary petitions for relief (together with the Involuntary Petitions, the "**Petitions**") pursuant to Chapter 11 of the Code with the US Court. I am aware that copies of the Petitions will be attached to the report of the Proposed Information Officer (the "**Report**") and certified copies thereof will be provided to the Court at or before the hearing of this Application.
- 5. The cases commenced or consented to by the Chapter 11 Debtors in the US Court shall be referred to herein as the "**Chapter 11 Cases**". Capitalized terms used herein and not otherwise defined shall have the meaning given to them in my declaration attached as Exhibit "A" hereto (my "**First Day Declaration**").

6. In connection with the Chapter 11 Cases, on June 11, 2012, the Chapter 11 Debtors obtained an emergency bridge order authorizing the Chapter 11 Debtors to use cash collateral, continue use of their cash management system and authorizing payment of pre-petition wages and benefits (the "**Bridge Order**"). I understand that by the terms of the Bridge Order, it will expire upon the granting of the First Day Orders (defined below).
7. The Chapter 11 Debtors have filed several "first day motions" with the US Court and, as of the time of the swearing of this affidavit, the Chapter 11 Debtors intend to seek orders in respect of those motions on June 12, 2012. Included in those first day motions are motions (the "**First Day Motions**") for the following orders (collectively, the "**First Day Orders**"):
 - (a) Foreign Representative Order (defined below);
 - (b) Cash Management Order (defined below);
 - (c) Financing Order (defined below);
 - (d) Pre-Petition Wages Order (defined below);
 - (e) Insurance Program & Insurance Premium Financing Order (defined below);
 - (f) Pre-Petition Customers, Warehouseman, Common Carriers and Cargo Claims Order (defined below);
 - (g) Pre-Petition Sales & Use Tax Order (defined below);
 - (h) Critical Vendor Order (defined below); and
 - (i) Utilities Service Order (defined below).
8. I am aware that copies of the First Day Motions including the proposed forms of First Day Orders will be attached to the Report.
9. In support of and in connection with the First Day Motions, I have submitted my First Day Declaration.
10. My First Day Declaration provides a comprehensive overview of the Allied Group's background, its business and the events leading up to the commencement of the Chapter 11 Cases. As such, this affidavit, provides more general overview and background and

focuses on providing this Court with information to support the finding of the centre of main interest ("COMI") of the Allied Group as well as in connection with the request for recognition of the foreign main proceedings and the First Day Orders, the appointment of the foreign representative and the Proposed Information Officer and the granting of the Administrative Charge and DIP Charge (both defined below)

THE ALLIED GROUP

11. Allied Systems US, which is the ultimate parent of the other Chapter 11 Debtors, is a privately held Delaware corporation headquartered in Atlanta, Georgia. The registered head office of Allied Systems US is 2302 Parklake Drive, Suite 600, Atlanta Georgia.
12. Allied Systems US has a number of direct and indirect subsidiaries. Of the Chapter 11 Debtors, all but two (2) of them are incorporated under the laws of the State of Delaware, the State of Georgia, the State of Florida and the State of Michigan (collectively and together with Allied Systems US, the "**US Companies**"). The registered head office of each of the US Companies is either 2302 Parklake Drive, Suite 600 Atlanta, Georgia or 20 Oak Hollow, Suite 350, Southfield, Michigan.
13. The remaining two (2) Chapter 11 Debtors, Allied Systems Canada and Axis Canada (collectively, the "**Canadian Companies**") are unlimited liability companies incorporated pursuant to the *Nova Scotia Companies Act*. The registered head office of the Canadian Companies is the law offices of Stewart McKelvey in Halifax, Nova Scotia. The principal place of business for Allied Systems Canada is 45 Goderich Road, #8, Hamilton, Ontario (although, as discussed below, only minimal administrative functions are carried out in Canada - the Canadian Companies are for all intents and purposes, administered and managed out of the US). All employees of Axis Canada work from home. Its principal place of business is 2302 Parklake Drive, Suite 400, Atlanta, Georgia.
14. Attached as Exhibit "B" hereto is a corporate chart of the Allied Group.
15. All of the directors and officers and all members of senior management of the US Companies are located in the US. All of the directors and officers (other than one officer

of Allied Systems Canada) are located in the US. The officer of Allied Systems Canada located in Canada reports directly to the chief executive officer of Allied Systems US.

16. Allied Systems US also has one (1) indirect subsidiary incorporated pursuant to the laws of Bermuda, a direct subsidiary incorporated pursuant to the laws of the Cayman Islands and a number of indirect subsidiaries incorporated pursuant to the laws of Mexico which are not part of these proceedings.

THE BUSINESS

Overview

17. Allied's major line of business is carried out by Allied Automotive Group, Inc. ("**Allied Automotive**")¹ and its direct and indirect subsidiaries including its US operating subsidiary, ASL and Canadian operating subsidiary Allied Systems Canada (collectively the "**Allied Automotive Group**"). This major line of business (the "**Hauling Business**"), known in the industry as "car-haul," is the transport of light vehicles, such as automobiles, sport-utility vehicles and light trucks, from manufacturing plants, ports, auctions, and railway distribution points to automobile dealerships in the United States and Canada. The trips are generally what are known in the industry as "short hauls," with each averaging less than two hundred miles. Allied's major customers in the Hauling Business are automobile manufacturers.
18. Through the Hauling Business, ASL transports light vehicles by means of tractor trailers (the "**Rigs**") specially designed for transporting light vehicles. As of the end of 2011, Allied owned about 2400 Rigs, which operated out of about 44 terminals, most of which were leased, located in the United States and Canada. Currently, there are approximately 375 Rigs which are operated out of eleven (11) active terminals located in Canada.

¹ Allied Automotive is a direct subsidiary of Allied Systems US incorporated pursuant to the laws of the State of Georgia.

19. The Allied Group's much smaller line of business is carried out by Axis Group, Inc. ("**Axis US**")² and its direct and indirect subsidiaries including Axis Canada (collectively, the "**Axis Group**"). This line of business includes arranging for and managing vehicle distribution services, automobile inspections, auction and yard management services, vehicle tracking, vehicle accessorizing, and dealer preparation services for the automotive industry in the United States and Canada, and providing yard management services in Mexico ("**Logistics Business**"). The Axis Group operates from 39 sites located in the United States, Canada, and Mexico.
20. In 2010, Allied had revenue of about \$543 million. In 2011, Allied had substantially less revenue (about \$343 million) because, in the first quarter of 2011, Allied ceased providing car-haul services to several customers. This occurred in March 2011, after Allied approached substantially all of its car-haul customers for rate increases, because the rate levels then in effect were not sustainable and did not cover current operating costs. New long-term contracts and rate increases were achieved with Ford and several smaller customers in the United States and with Ford, Mazda, Hyundai, Kia, Nissan, Honda and Mitsubishi in Canada. However, General Motors, Chrysler, Toyota, and Honda in the United States refused to accept the rate increases and, consequently, Allied discontinued providing car-haul services to these companies.

Employees

21. A detailed description of the Allied Group's employees including information on wages and benefits is set out in the Pre-Petition Wages Motion (defined below) and therefore not repeated here.
22. Allied employs about 1,835 people (including approximately 490 active employees in Canada) of whom about 1,062 are Teamster Employees. ASL's drivers are unionized. These employees (the "**Teamster Employees**") are members of local unions affiliated with the International Brotherhood of Teamsters (the "**Teamsters**"), which negotiates on behalf of the local unions and their members.

² Axis US is a direct subsidiary of Allied Systems US and is incorporated pursuant to the laws of the State of Georgia.

23. In Canada, Allied Systems Canada employs approximately 449 active employees of which approximately 390 are members of the Teamsters and the Canadian Auto Workers' Union. Overall, the majority of the employees of Allied Systems Canada can be broken down as follows:
 - (a) Drivers (including owner/operators and partial brokers): 307
 - (b) Yard employees: 26
 - (c) Maintenance: 44
 - (d) Administrative (including operational administrative employees such as terminal managers, dispatchers, shop supervisors, sales and operational clerical staff): 72
24. Allied Systems Canada also has approximately 460 employees who are inactive.
25. Axis Canada employs approximately twelve (12) non-union employees, all of whom work from home.

Business in Canada

26. Both the Hauling Business and the Logistics Business are operated in Canada through Allied Systems Canada and Axis Canada, respectively (the "**Canadian Business**").
27. Since the 2005 Restructuring (discussed below), the operations in Canada have been even further integrated into the entire enterprise such that there are very minimal administrative functions performed in Canada. Due to the relocation of administrative functions as well as the reduction of business from renegotiation of contracts, Allied Systems Canada has shut down six (6) locations over the last year.
28. Allied Systems Canada has three (3) owned locations and fourteen (14) leased locations across Canada. Most of these locations are terminals. There is one (1) small administrative office located in Hamilton, Ontario from which a small number of personnel conduct administrative duties. There are little or no managerial or marketing functions performed out of that office and all the personnel report directly to individuals located in the U.S.

29. Axis Canada's business consists of inspection of off-lease vehicles at dealerships and auctions. It has twelve (12) employees including one (1) manager, all of whom work from home. There are no leased locations. Axis Canada's revenues constitute less than 2% of the overall Canadian Business' revenues.
30. The Canadian Companies are almost entirely reliant upon the US managerial functions provided by ASL for all overhead ("**Overhead Services**") including, for example, IT services, human resources (including processing of payroll), marketing and strategic direction. As part of the Chapter 11 Debtors' operational system, Allied Systems US books a charge in respect of the Overhead Services based on the terms of the advanced pricing agreement entered into with Canada Revenue Agency and the Internal Revenue Service. These amounts are then reconciled from time to time based on the actual cash needs of Allied Systems Canada.
31. The Canadian Companies maintain separate bank accounts. However, those bank accounts are integrated into the Chapter 11 Debtors' overall cash management system (discussed in further detail below) and funds are moved among the accounts to address cash flow needs.
32. In 2011, revenue from Canada made up approximately 35% of the Allied Group's overall annual revenues. This percentage was larger than in previous years and was due primarily to the large scale reduction in business in the US described in paragraph twenty (20) above.
33. For 2011, Allied Systems Canada recorded a loss of approximately \$23 million. For the first four (4) months of 2012, Allied Systems Canada recorded a loss of approximately \$3.7 million. The Canadian Companies have not generated any cash on a net basis in 2011 or 2012. Allied Systems Canada does not have sufficient cash flow to meet all of its expenses and the amounts charged by ASL for the Overhead Services. These fees are accruing as an account payable from Allied Systems Canada to ASL. As set out on the Canadian balance sheet, the inter-company balance owing by the Canadian Companies to ASL as of April 30, 2012 was \$145 million, which consists primarily of unpaid management fees and costs of the initial investment \$62 million.

34. Further, the Canadian Companies have provided guarantees under the Allied Group's current First Lien Credit Facility and Second Lien Credit Facility. In connection with the guarantees provided, the Canadian Companies have granted general security over all of their real and personal property with the exception of certain "non-material assets" which are discussed in further detail below.
35. As such, I do not believe that the Canadian Companies, on a stand-alone basis, could operate without the enterprise as a whole both because of a lack of Overhead Services as well as from a financial point of view.

THE 2005 RESTRUCTURING

36. My First Day Declaration contains a comprehensive outline of the previous proceedings commenced in 2005 by the Chapter 11 Debtors. Briefly:
- (a) In July 2005, the Chapter 11 Debtors commenced Chapter 11 cases (collectively the "**Original Chapter 11 Case**") in the US Court. The Allied Plan of Reorganization was confirmed by order entered on May 18, 2007 and became effective on May 29, 2007 (the "**Effective Date**").
 - (b) In connection with the Original Chapter 11 Case, the Chapter 11 Debtors commenced proceedings (the "**Prior CCAA Proceeding**") in this Court pursuant to what was then Section 18.6 of the CCAA. In the Prior CCAA Proceeding, the Canadian Court issued orders which, among other things, recognized the Original Chapter 11 Case as a foreign proceeding under the CCAA, stayed creditors from instituting proceedings or taking remedies in Canada against the Chapter 11 Debtors or their property, approved the Chapter 11 Debtors' financing, and gave full effect to the Allied Plan of Reorganization.

THE FIRST LIEN CREDIT FACILITY AND THE SECOND LIEN CREDIT FACILITY

37. The Exit Financing established on the Effective Date of the Allied Plan of Reorganization is still extant as of the commencement of the Chapter 11 Case. This Exit Financing is comprised of two credit facilities which together provide financing of up to \$315 million.

The largest facility is the credit facility (the "**First Lien Credit Facility**"), which provides for up to \$265 million in financing on terms originally set forth in the *Amended and Restated First Lien Secured Super-Priority Debtor in Possession and Exit Credit and Guaranty Agreement*, dated as of March 30, 2007, amended and restated as of May 15, 2007 (the "**First Lien Credit Agreement**"). The other credit facility (the "**Second Lien Credit Facility**") provides for up to \$50 million in loans on terms originally set forth in a *Second Lien Secured Super-Priority Debtor in Possession and Exit Credit and Guaranty Agreement*, dated as of May 15, 2007 (the "**Second Lien Credit Agreement**").

38. The First Lien Credit Facility is secured by a first-priority security interest in substantially all of the Chapter 11 Debtors' assets, including accounts, general intangibles, money, inventory, equipment (including Rigs), real estate and the stock of certain subsidiaries (the "**Collateral**") as granted by an *Amended and Restated Pledge and Security Agreement (First Lien)* dated as of May 15, 2007. The Second Lien Credit Facility is secured by a second-priority security interest in the Collateral, as granted by an *Amended and Restated Pledge and Security Agreement (Second Lien)* dated as of May 15, 2007. Allied and the collateral agents for the two credit facilities entered an *Intercreditor Agreement* dated as of May 15, 2007 to set forth, among other things, the relative rights and priorities as between these two credit facilities. As set out above, the Canadian Companies have guaranteed the obligations under the First Lien Credit Facility and the Second Lien Credit Facility and have pledged their Collateral as security for those obligations. There is a small piece of real property owned in Winnipeg where no mortgage was formally registered.
39. The First Lien Credit Facility is provided by a group of financial institutions (the "**Lenders**"), one of which, CIT Group/Business Credit Inc. ("**CIT**"), has served as administrative and collateral agent of this facility. The First Lien Credit Facility is comprised of the following three facilities: (i) a facility (the "**Revolving Loan Facility**") for revolving loans and swing line loans (collectively the "**Revolving Loans**") up to the amount of \$35 million, (ii) a facility (the "**Letter of Credit Facility**") for the issuance by a bank ("**Issuing Bank**") of letters of credit ("**Letters of Credit**") for the account of

Allied in the amount of up to \$50 million; and (iii) a Term Loan Facility for loans ("**First Lien Term Loans**") up to the amount of \$180 million.

40. CIT is the sole Lender under the Revolving Loan Facility Agreement and is not a Lender under the other two facilities. The other Lenders ("**First Lien Term Loan Lenders**") have made the First Lien Term Loans and deposited up to \$50 million to support the Letter of Credit Facility. CIT asserts that the *Amended and Restated Pledge and Security Agreement (First Lien)* dated as of May 15, 2007 provides for the Revolving Loans to the paid before the Term Loans or the obligations due to the First Lien Term Lenders under the Letter of Credit Facility.
41. The Second Lien Credit Facility, which provides for loans ("**Second Lien Term Loans**") of up to \$50 million, is provided by certain lenders ("**Second Lien Lenders**"). Goldman Sachs Credit Partners L.P. ("**Goldman Sachs**") was the original administrative agent and collateral agent of this facility and was later replaced in these capacities by Bank of New York Mellon.
42. Both the First Lien Credit Facility and the Second Lien Credit Facility provide that lenders ("**Requisite Lenders**") under each facility with more than 50% of the exposure under the respective facility have certain powers and the right to direct the administrative agent and the collateral agent with respect to certain actions, including whether to waive or exercise remedies if an event of default ("**Event of Default**") should occur under the respective facility.

Administration of the Credit Facilities

43. On May 6, 2008, Yucaipa acquired the face amount of \$40 million of the Second Lien Term Loan and exchanged \$20 million of it for 21,396 shares of preferred stock ("**Series A Preferred Stock**"), convertible into common stock at a conversion price, whereby each preferred share is valued at \$934.74. In connection with Yucaipa's acquisition of the Second Lien Term Loan, the Second Lien Credit Facility was amended to allow Yucaipa to be an assignee (an "**Eligible Assignee**") with no restrictions on its right to

vote. Yucaipa thereby became the Requisite Lender under the Second Lien Credit Facility.

44. In August 2008, heavily impacted by the sharp downturn that year in OEM Production, Allied notified CIT, as Administrative Agent of the First Lien Credit Facility, that, as of June 30, 2008, Allied was in default under that facility in that Allied was not in compliance with certain of its financial covenants in the First Lien Credit Agreement. On September 3, 2008, CIT, as Administrative Agent, sent Allied notice of default and of reservation of rights. Effective September 24, 2008, Allied and CIT entered a Forbearance Agreement, which, as amended, expired on November 15, 2008. On November 24, 2008, CIT sent Allied another notice of default and reservation of rights. However, CIT received no instruction from the Requisite Lenders to terminate the Credit Facility or to declare the indebtedness thereunder to be due.
45. By April 2009, ComVest Investment Partners III, L.P. ("**ComVest**") had acquired a majority of the outstanding Lender exposure under First Lien Credit Facility and had thereby become the Requisite Lender. On August 21, 2009, ComVest and Allied entered an amendment ("**Fourth Amendment**") to the First Lien Credit Agreement to allow Yucaipa to be an Eligible Assignee, with no restriction on its right to vote. In connection with this amendment, Yucaipa purchased from ComVest the majority in face value of the First Lien Exposure. However, CIT declined to recognize the validity of the Fourth Amendment and consequently declined to recognize Yucaipa's status as the Requisite Lender under the First Lien Credit Facility.
46. In November 2009, Allied Systems Holdings, Inc and Yucaipa sued CIT to establish (1) that Yucaipa became the Requisite Lender in August 2009 and (2) that CIT was damaging Yucaipa and Allied by failing to take action lawfully demanded by Yucaipa as Requisite Lender.
47. In 2009, after General Motors Corporation and Chrysler LLC commenced their bankruptcy cases and shut down most production, in order to preserve Allied's liquidity position, Allied did not make quarterly interest payments due under the First Lien Credit

Facility for the third and fourth quarters. Since then, Allied has not made payments due under the First Lien Credit Facility and the Second Lien Credit Facility.

48. Allied Systems US, Yucaipa and CIT settled the litigation among them with regard to the First Lien Credit Facility pursuant to a Settlement Agreement dated as of December 5, 2011, with the parties filing Mutual Dismissals with Prejudice on December 7, 2011. The terms of the Settlement Agreement include, among others, mutual limited releases, the recognition of the validity of the Fourth Amendment and of Yucaipa as the Requisite Lender, provisions for the resignation and replacement of CIT as administrative and collateral agent, the recognition, by Allied and Yucaipa, of the payment priority of CIT's revolver over the term loans included in the First Lien Credit Facility, and the reduction of the letter of credit facility.

RECENT EVENTS

49. On January 18, 2012, three lenders under the First Lien Credit Facility filed suit against Yucaipa in the Supreme Court of the State of New York, Index No. 650150/2012. These lenders were Black Diamond CLO 2005-1 Ltd., its affiliate BDCM Opportunity Fund II, L.P., and Spectrum Investment Partners, L.P. In this suit (the "**Black Diamond/Yucaipa Action**"), the plaintiffs seek a judicial declaration that the Fourth Amendment is null and void and that Yucaipa is not the Requisite Lender under the First Lien Credit Facility. The grounds for the Black Diamond/Yucaipa Action are similar to those asserted by CIT in the prior action between CIT, Yucaipa and Allied Systems Holdings, Inc. The Black Diamond/Yucaipa Action is still pending.
50. While the Black Diamond/Yucaipa Action was being litigated, Allied was exploring the possibility of a sale of its business.
51. On May 17, 2012, the three plaintiffs in the Black Diamond/Yucaipa Action filed involuntary bankruptcy petitions seeking relief under Chapter 11 against Allied Systems US and its subsidiary Allied Systems Ltd. (L.P.) in the U.S. Bankruptcy Court for the District of Delaware. A copy of the involuntary petitions are attached hereto as Exhibit "C"

52. As of the commencement of the involuntary bankruptcy cases, the outstanding principal amount due under the First Lien Credit Agreement totalled about \$244 million, including about \$35 million due under the Revolving Loan Facility. The First Lien Credit Agreement provides for varying interest rates for its facilities, in addition to a default rate of 2% over the otherwise applicable rates. Also, as of the commencement of the involuntary cases, the outstanding principal amount due under the Second Lien Term Facility was \$30 million.
53. In light of the involuntary bankruptcy cases and its financial condition, Allied determined that it would be in the best interests of their estates to proceed under Chapter 11. Therefore, Allied Systems US and ASL consented to relief under Chapter 11, and caused the balance of the Chapter 11 Debtors to join them by filing voluntary Chapter 11 petitions.

RELIEF SOUGHT

Recognition of the Foreign Proceedings

54. The Chapter 11 Debtors seek recognition of the Chapter 11 Cases as "foreign main proceedings" pursuant to Part IV of the CCAA.
55. As set out above, the Allied Group is managed on a consolidated basis and its operations are highly centralized. Other than Allied Systems Canada and Axis Canada, all of the Chapter 11 Debtors are incorporated under U.S. law, have their corporate headquarters in the U.S. and carry out their business and have all of their assets located in the U.S. The only exception to that is cross-border haul of goods, which is generally on a short-term basis.
56. As set out above, with respect to the Canadian Companies, the registered office for those companies is in Nova Scotia. However, that location was listed for corporate purposes only. On an operational basis, the Canadian Companies are highly integrated into the Allied Group and would not be able to function as independent entities absent the corporate functions performed in the U.S. Notably:

- (a) All corporate decisions for the Allied Group are made in Atlanta;
- (b) All human resource functions (other than one administrative individual in Canada) including the processing of payroll are located in Atlanta;
- (c) All information technology systems are located in Atlanta;
- (d) All of the directors and officers of the Chapter 11 Debtors are located in Atlanta other than one vice-president of Allied Systems Canada who is located in Hamilton, Ontario;
- (e) Other than sales, all marketing and communications functions are located in Atlanta;
- (f) All of management of the Chapter 11 Debtors is located in Atlanta other than one vice-president of Allied Systems Canada who is located in Hamilton, Ontario;
- (g) The Canadian vice-president of Allied Systems Canada reports directly to the Chief Executive Officer in Atlanta;
- (h) All cash management and accounting functions are located in Atlanta;
- (i) All pricing decisions and business development is directed out of Atlanta; and
- (j) Allied's most significant creditors are all based in the United States.

Appointment of the Information Officer

- 57. As part of its application, the Chapter 11 Debtors are seeking to appoint Duff Canada as the information officer. Duff Canada is a certified trustee in bankruptcy in Canada and its principals (formerly of RSM Richter Inc.) have acted as an information officer in several previous ancillary proceedings (both under Part IV of the CCAA as well as the former section 18.6 of the CCAA).
- 58. Duff Canada has consented to acting as the information officer in these proceedings.
- 59. In the preceding two (2) years, Duff Canada has not been a director or officer of either Allied Systems Canada or Axis Canada. I am aware that one of the directors of Allied Systems US, Brian Cullen, is a principal of Duff and Phelps Securities, LLC ("Duff US"). I am aware that the Report will provide further details on the legal relationship between Duff Canada and Duff US. The board of directors of Allied Systems US consists of five (5) members including Mr. Cullen. The Canadian Companies have

separate boards of directors. The Allied Group and Duff Canada have agreed to a protocol whereby: (a) Duff Canada will deal directly with the Allied Group; (b) Duff Canada will not have direct contact with Mr. Cullen on any matter involving the Allied Group; and (c) Mr. Cullen will recuse himself from any discussions or decisions involving Duff Canada.

60. The Chapter 11 Debtors propose to grant the Proposed Information Officer an administrative charge with respect to the Proposed Information Officer's fees and disbursements including those of its legal counsel in the maximum amount of CDN\$600,000. I am advised by Jennifer Stam of Gowling Lafleur Henderson LLP that the granting of such a charge is standard in these circumstances. I believe the amount of the charge to be reasonable in the circumstances, having regard to the size and complexity of these proceedings and the role that will be required of the Proposed Information Officer.

Recognition of the First Day Orders

61. In connection with the filing of the Chapter 11 petitions, the Chapter 11 Debtors have sought, on an expedited basis, the Bridge Order. It is expected that the Bridge Order will expire upon the granting of the First Day Orders.
62. As of the time of the swearing of this affidavit, the Chapter 11 Debtors have filed the First Day Motions with the US Court. It is currently expected that the hearing for the First Day Motions will be heard by the US Court on June 12, 2012. Those First Day Motions can be summarized as follows:
- (a) *Motion to authorize Allied Systems Holdings, Inc. to act as foreign representative of the Chapter 11 Debtors (the "Foreign Representative Order")* – pursuant to this motion, Allied Systems US will be authorized to act as the "foreign representative" in order to seek the relief sought in this Application;
 - (b) *Motion for authority to maintain existing cash management system and bank accounts, continue use of existing checks and business forms, limited waiver of §345(B) and continue to make intercompany advances (the "Cash Management Order")* – the cash management motion contains a detailed description of the Chapter 11 Debtors cash management system including details regarding the Canadian Companies' bank accounts and seeks authorization for ongoing use of

that system. It further seeks relief to permit ongoing intercompany advances, which as set above, are crucial to the enterprise and, in particular, the Canadian Companies;

- (c) *Motion (the “**Financing Motion**”) for interim and final orders authorizing debtors to obtain post-petition financing, authorizing debtors to use cash collateral, granting adequate protection to the prepetition lenders; modifying the automatic stay and scheduling a hearing pursuant to Bankruptcy Rule 4001 (the “**Financing Order**”) – see below for further discussion;*
- (d) *Motion (the “**Pre-Petition Wages Motion**”) for an order to authorize payment of pre-petition wages, payroll taxes, certain employee benefits and related expenses, and other compensation to employees and independent contractors (the “**Pre-Petition Wages Order**”) – the pre-petition wages motion contains a detailed description of the Chapter 11 Debtors’ employee obligations in both the United States and Canada. Given the proposed course of action of ongoing business, it is crucial that the Chapter 11 Debtors be authorized to continue payment of wages, benefits and related amounts (including reimbursement of expenses) whether such amounts are in respect of the pre or post-filing period;*
- (e) *Motion for an order to authorize payment of insurance premiums - Insurance Program & Insurance Premium Financing (the “**Insurance Program & Insurance Premium Financing Order**”) - the insurance motion provides a detailed description of the Chapter 11 Debtors insurance programs, including the Canadian policies;*
- (f) *Motion for an order to authorize payment of pre-petition claims of customers, warehousemen and common carriers and cargo (the “**Pre-Petition Customers, Warehouseman, Common Carriers and Cargo Claims Order**”) - The motion seeks to authorize the Chapter 11 Debtors to pay certain prepetition custom duties, common carrier and warehouseman claims which are ordinary course and necessary for the Chapter 11 Debtors’ ongoing operations. The Chapter 11 Debtors also seek authorization to pay certain prepetition claims for damaged cargo where the damage was incurred prior to the filing date;*
- (g) *Motion for an order to authorize payment of pre-petition sales and use tax (the “**Pre-Petition Sales & Use Tax Order**”) - the Chapter 11 Debtors have sought authorization to continue payment of sales and use tax including highway use taxes (including in Canada) whether such amounts accrued pre-petition or post-petition;*
- (h) *Motion for an order to authorize payment of certain critical vendors (the “**Critical Vendor Order**”) - the Chapter 11 Debtors have several critical vendors in the United States or Canada. In coming up with a determination as to which vendors are “critical vendors” the Chapter 11 Debtors took into consideration several factors, all of which are set out in the critical vendors motion. The*

Chapter 11 Debtors seek authority to be able to pay certain pre-petition amounts to such vendors; and

- (i) *Motion for an order to assure utilities providers* (the “**Utilities Service Order**”) - the Chapter 11 Debtors utilize the services of several utilities providers across North America. The utilities service motion contains a detailed outline of service providers (including a scheduled listing of such providers) and seeks a direction that utilities providers continue to provide service and a declaration that utilities providers are adequately assured based on the proposal set out in the motion.

- 63. Provided that the First Day Orders are granted by the US Court, the Chapter 11 Debtors are seeking recognition of the First Day Orders by this Court. A certified copy of the Foreign Representative Order will be provided to the Court at or before the hearing of this Application.

DIP Financing and DIP Charge

- 64. As set out above, one of the First Day Orders being sought by the Chapter 11 Debtors is the Financing Order.
- 65. After the filing of the Involuntary Petitions, the Chapter 11 Debtors retained Rothschilds (the “**Financial Advisor**”) as their financial advisor. Rothschilds approached a number of sources to obtain interim financing but none of them were willing to consider providing financing where the DIP Charge (defined below) would be junior to the existing secured indebtedness or a DIP Charge (defined below) that provided priming liens, without the consent of the Requisite Lenders. Rothschilds then entered into negotiations with Yucaipa (who in turn, entered into discussions with certain other of the lenders within the First Lien Credit Facility) to discuss the terms on which Yucaipa, on its own or with other participants, would provide interim financing during the Chapter 11 cases. The decision to approach Yucaipa, who is a majority lender in both the First Lien Credit Facility and the Second Lien Credit Facility as well as a majority shareholder of Allied Systems US, was logical given the urgency imposed by the filing of the Involuntary Petitions. In that regard, I do not believe that time would have been well spent approaching new lenders to try to obtain financing for a restructuring.
- 66. The Chapter 11 Debtors have entered into a Senior Secured Super-Priority Debtor in Possession Credit and Guaranty Agreement (the “**DIP Agreement**”) with Yucaipa, as

agent and certain other lenders (the **"DIP Lender"**) providing for a debtor-in-possession loan facility of up to \$20 million (the **"Interim Financing"**). The full terms of the DIP Agreement are set out in the Financing Motion. A complete copy of the Financing Motion is or will be attached to the Report. Attached hereto as Exhibit "D" is an excerpt from the Financing Motion setting out the terms of the DIP Agreement.

67. The amount of the proposed Interim Financing was based on cash projections prepared by Allied to assess its estimated cash needs during the restructuring period. These projections were prepared with the assistance of the Financial Advisor and included assumptions based on the requirements under applicable US and Canadian bankruptcy laws. The Interim Financing during the proposed restructuring period is required to fund the Chapter 11 Debtors ongoing operations during that period, including the operations of the Canadian Business. Further details regarding the Chapter 11 Debtors cash requirements are set out in the Financing Motion.
68. In connection with the Interim Financing to be provided by the DIP Lender, the Foreign Representative is seeking recognition of the Post-Petition Financing Order as well as an order granting a charge (the **"DIP Charge"**) charging the collateral located in Canada, (the **"Canadian Collateral"**) of the Chapter 11 Debtors.
69. The proposed priority of the DIP Charge as of the initial hearing in Canada is to provide the DIP Charge on the Canadian Collateral with priority over the security held for obligations under the First Lien Credit Facility and the Second Lien Credit Facility. The terms of those facilities permit the Requisite Lender to consent to a subordination of its security. Yucaipa, as the Requisite Lender under those facilities has consented to such subordination. Further details regarding Yucaipa's participation in the First Lien Credit Facility and the Second Lien Credit Facility are set out in my First Day Declaration.
70. The proposed DIP Charge will not secure any prior obligations of the Chapter 11 Debtors owing to the DIP Lender.
71. The Canadian Companies are guarantors under the DIP Agreement and, under its terms, will grant security on the Canadian Collateral, to secure the obligations under the

guarantees. The DIP Lender has advised that the granting of this security is a condition to the DIP Lender providing the Interim Financing.

72. As set out above, the Canadian Companies rely on ASL to provide essential Overhead Services for their operations and, in fact, due to their cash restrictions are not generally in a position to pay the management fee charged for such services (as reflected in the growth of the intercompany balance described above). The Canadian Companies will receive a direct benefit from the continued funding of the US Companies. Further, both of the Canadian Companies are guarantors under the First Lien Credit Facility and the Second Lien Credit Facility.
73. As set out above the Chapter 11 Debtors did not have any success in finding alternative financing on better terms. As such, the chances of the Canadian Companies finding such financing is even more remote. Further, given the level of integration of the Canadian Companies with the US business as well as the existing encumbrances, I do not believe that there is a viable stand-alone financing or restructuring option for the Canadian Companies. As such, I believe it is in the best interests of the Canadian Companies to provide such guarantees and security and will not result in any material prejudice to Canadian stakeholders.

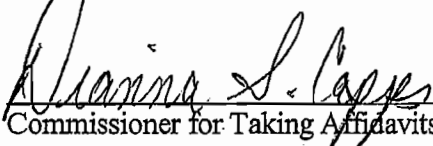
PROPOSED COMEBACK HEARING

74. As set out above, the Foreign Representative is seeking recognition and implementation of the Financing Order in Canada.
75. The Chapter 11 Debtors intend on seeking a comeback hearing within the next thirty (30) days at which time further relief will be sought with respect to the priority of the DIP loan and possibly other matters.

CONCLUSION

76. For the reasons set out above, the Applicant respectfully requests that the relief sought in this Application be granted.

SWORN before me at the City of Atlanta
in the State of Georgia,
this 11th day of June, 2012


Commissioner for Taking Affidavits or Notary

Dianna S Capps
Notary Public, DeKalb County, Georgia
My Commission Expires March 7, 2013

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)
)
)


SCOTT MACAULAY

SCHEDULE A – APPLICANTS

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

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

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

Chapter 11

Case No. 12-11564 (CSS)

(Joint Administration Pending)

**DECLARATION OF SCOTT D. MACAULAY IN SUPPORT OF
CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS**

Scott D. Macaulay, being duly sworn, deposes and says:

1. I am Senior Vice President and Chief Financial Officer of Allied Systems Holdings, Inc. In this capacity, I have substantial knowledge about the business of Allied Systems Holdings, Inc. and its direct and indirect subsidiaries (collectively "Allied").

2. Allied Systems Holdings, Inc. and its direct and indirect U.S. and Canadian subsidiaries (collectively the "Debtors") have just become debtors in possession in Chapter 11 cases (collectively the "Chapter 11 Case") and are requesting relief by means of motions (the "First Day Motions") filed substantially contemporaneously with the orders of relief under Chapter 11. The First Day Motions seek relief necessary to establish joint administration and to continue to operate as a going concern. I submit this Declaration in support of the First Day Motions.

This is Exhibit "A" referred to in the
affidavit of SCOTT MACAULAY
sworn before me, this 14th
day of JUNE 20 12

Dianna S. Capps

The Debtors in these cases, along with the federal tax identification number (a 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 (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2913187); Cordia Transport LLC (38-1985795); E.J. Boutell Driveaway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); OAT, 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.

REF: 6086970 v. 1

Dianna S Capps
Notary Public, DeKalb County, Georgia
My Commission Expires March 7, 2013

Date filed: 06/11/12
Docket No. 80

3. Except as otherwise indicated, the statements in this Declaration are based upon my personal knowledge and upon Allied's business records, which are kept in the course of Allied's regularly conducted business activity and which were made at or near the time of the activity, in accordance with the regular practice of that business activity.

4. Part I of this Declaration provides an overview of Allied's organization, business operations, financial condition, recent history, and the circumstances giving rise to the commencement of the Chapter 11 Case.² Part II of this Declaration sets forth facts more particularly relevant to the various First Day Motions.

I.

OVERVIEW

A. Allied's Corporate Organization and Business.

5. Allied Systems Holdings, Inc., the ultimate parent of the other Debtors, is a privately held Delaware corporation headquartered in Atlanta, Georgia. The Debtors were reorganized in Chapter 11 cases (collectively the "Original Chapter 11 Case") that were filed in the United States Bankruptcy Court for the Northern District of Georgia on July 31, 2005 and that resulted in a plan of reorganization (the "Allied Plan of Reorganization"), which was confirmed and became effective on May 29, 2007 (the "Effective Date").³ As a result of the reorganization, Allied's then unsecured creditors became the shareholders of Allied Systems

² The financial data for all of the entities which comprise Allied are reported on a consolidated basis. Accordingly, throughout this Declaration, discussions of financial data and the related implications upon business operations are often presented with reference to "Allied."

³ Allied Systems Holdings, Inc. is the successor by merger with Allied Holdings, Inc., which was the ultimate Allied parent when the Original Chapter 11 Case was filed. When the Allied Plan of Reorganization became effective, Allied Systems Holdings, Inc. was created as a subsidiary of Allied Holdings, Inc., which was merged into Allied Systems Holdings, Inc., the surviving corporation. Thus, in connection with the Original Chapter 11 Case, the terms "Allied" and "Debtors" exclude Allied Systems Holdings, Inc. and include Allied Holdings, Inc. Also, in connection with the Original Chapter 11 Case, the term "Debtors" includes certain indirect Allied subsidiaries that no longer exist. Also, indirect Allied subsidiaries formed under the law of Mexico and Bermuda, as well as Haul Insurance Ltd., a captive insurance company formed under the law of the Cayman Islands, were not then and are not now Debtors.

Holding, Inc. Two investment funds became the largest shareholders. These two funds, Yucaipa American Alliance Fund I, LP and Yucaipa Alliance (Parallel Fund I, L.P. (collectively "Yucaipa"), affiliated with The Yucaipa Companies, LLC, together own about 63% of the outstanding shares of Allied Systems Holdings, Inc. After the reorganization, when Yucaipa acquired debt owed by Allied and contributed it to capital, Yucaipa was issued non-voting preferred shares convertible into common shares. If the preferred shares were so converted, Yucaipa would own about 70% of the outstanding common shares.

6. Allied Systems Holdings, Inc. has three direct subsidiaries. Two of them, Allied Automotive Group, Inc. and Axis Group, Inc., are Debtors. The third, Haul Insurance Limited, which is a captive insurance company incorporated under the laws of the Cayman Islands, is not a Debtor.

7. Allied's major line of business is carried out by Allied Automotive Group, Inc. and its direct and indirect subsidiaries (collectively the "Allied Automotive Group").⁴ This major line of business, known in the industry as "car-haul," is the transport of light vehicles, such as automobiles, sport-utility vehicles and light trucks, from manufacturing plants, ports, auctions, and railway distribution points to automobile dealerships in the United States and Canada. The trips are generally what are known in the industry as "short hauls," with each averaging less than two hundred miles. Allied's major customers are automobile manufacturers.

8. Allied Automotive Group, primarily through its operating subsidiary, Allied Systems Ltd. (L.P.) ("ASL") transports light vehicles by means of tractor-trailers (the "Rigs") specially designed for transporting light vehicles. As of the end of 2011, Allied owned about

⁴ The following Debtors are part of the Automotive Group: Allied Automotive Group, Inc., Allied Systems Ltd. (L.P.), Allied Systems (Canada) Company, QAT, Inc., RMX LLC, Transport Support LLC, E.J. Boutell Driveaway LLC, GACS Incorporated, Commercial Carriers, Inc., and Allied Freight Broker LLC.

2400 Rigs, which operated out of about 44 terminals, most of which were leased, located in the United States and Canada.

9. ASL's drivers are unionized. These employees (the "Teamster Employees") are members of local unions affiliated with the International Brotherhood of Teamsters (the "Teamsters"), which negotiates on behalf of the local unions and their members. Allied employs about 1,835 people of whom about 1,062 are Teamster Employees.

10. Allied's much smaller line of business is carried out by Axis Group, Inc. and its direct and indirect subsidiaries (collectively the "Axis Group").⁵ This line of business includes arranging for and managing vehicle distribution services, automobile inspections, auction and yard management services, vehicle tracking, vehicle accessorizing, and dealer preparation services for the automotive industry in the United States and Canada, and providing yard management services in Mexico. The Axis Group operates from 39 terminals located in the United States, Canada, and Mexico.

11. In 2010, Allied had revenue of about \$543 million. In 2011, Allied had substantially less revenue (about \$343 million) because, in the first quarter of 2011, Allied ceased providing car-haul services to several customers. In March 2011, Allied approached substantially all of its car-haul customers for rate increases, because the rate levels then in effect were not sustainable and did not cover current operating costs. New long-term contracts and rate increases were achieved with Ford and several smaller customers in the United States and with Ford, Mazda, Hyundai, Kia, Honda, Nissan and Mitsubishi in Canada. However, General

⁵ The following Debtors are part of the Axis Group: Axis Group, Inc., CT Services, Inc., Cordin Transport LLC, Terminal Services LLC, Axis Canada Company, Axis Arcta, LLC, Logistic Technology, LLC, Logistic Systems, LLC. Certain other foreign direct and indirect subsidiaries of Axis Group, Inc. are not Debtors.

Motors, Chrysler, Toyota, and Honda in the United States refused to accept the rate increases and, consequently, Allied discontinued providing car-haul services to these companies.

B. Decline in OEM Production

12. A major reason for the unsustainable rate levels that caused Allied to cease providing car-haul services to several substantial customers and that caused the Debtors to return to this Court is the drastic decline of production ("OEM Production") by original equipment manufacturers of light vehicles since the Allied Plan of Reorganization became effective in May 2007. This decline is a result of the recession which began in December 2007 and which is ongoing. The recession has hit the domestic automobile market particularly hard, with General Motors Corporation and Chrysler LLC commencing bankruptcy cases in 2009 and shutting down most production until their assets could be sold.

13. As a result of the drastic decline in OEM Production since 2007, there was an industry-wide oversupply of capacity to transport light vehicles. The fierce competition among trucking companies (both union and non-union) and railroads for contracts to transport these vehicles led Allied's customers to reduce substantially the rate of compensation offered to Allied and its competitors. Thus, lower OEM production combined with lower rates of compensation caused Allied to suffer large losses in the years since its reorganization in 2007.

14. The aggregate industry OEM production of light vehicles in North America in 2007 was approximately 15 million units. OEM Production declined drastically in 2008 and 2009 with a slight improvement in 2010, when production reached 11.9 million units. Reflecting that decline in production, Allied transported 6.9 million light vehicles in 2007 and had revenue of \$823 million, while in 2010, Allied transported 4.5 million light vehicles and had revenue of \$543 million.

15. While the rate of compensation to Allied for transporting light vehicles has been declining, Allied's expenses in many areas have increased. For example, the rate of compensation of its Teamster Employees increased by over 15% in June 2010 and increased again in June 2011. Also, as the Rigs age, they require more maintenance and capital improvements.

C. Allied's First Reorganization.

16. In connection with the Original Chapter 11 Case, the Debtors commenced ancillary proceedings (the "CCAA Proceeding") in the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") under the Companies' Creditors Arrangement Act ("CCAA"). In the CCAA Proceeding, the Canadian Court issued orders which, among other things, recognized the Original Chapter 11 Case as a foreign proceeding under the CCAA, stayed creditors from instituting proceedings or taking remedies in Canada against the Debtors or their property, approved the Debtors' financing, and gave full effect to the Allied Plan of Reorganization.

17. In the Original Chapter 11 Case, Allied's goals were (1) to increase revenue by increasing customer pricing, (2) to deleverage by conversion of debt into equity, and (3) to reduce labor costs through reductions in compensation and changes in work rules with respect to the Teamsters Employees and through shared sacrifice from non-union employees.

18. These goals were largely achieved, with significant aid from Yucaipa. During the original Chapter 11 Case, Yucaipa, among other things, (1) acquired about two-thirds of a series of unsecured notes that Allied had issued in the principal amount of \$150 million; (2) was the catalyst for obtaining an agreement with the Teamsters for concessions ("Labor Modifications") reducing wages of Allied's Teamster Employees by 15% for a three-year period; (3) financed the

acquisition of Rigs for Allied's use; (4) supported a plan to convert general unsecured debt into equity; and (5) aided Allied in securing the exit financing (the "Exit Financing") essential to its reorganization.

19. Yucaipa and the Teamsters joined the Debtors as proponents of the Allied Plan of Reorganization. As of the Effective Date of the Allied Plan of Reorganization, Allied Holdings, Inc. created Allied Systems Holdings, Inc. as a subsidiary and merged into it. As provided in the Allied Plan of Reorganization, the outstanding stock of Allied Holdings, Inc. was canceled and Allied Systems Holdings, Inc. issued new common stock to Allied's general unsecured creditors, with Yucaipa becoming the owner of about 63% of it. Also as of the Effective Date, Allied's Exit Financing and the Labor Modifications became effective. Allied Systems Holdings, Inc. became a private company and terminated its reporting obligations with the Securities and Exchange Commission.

D. Labor Costs

20. At the end of May 2010, the Labor Modifications agreed to as part of the Allied Plan of Reorganization expired. The Teamsters insisted on an immediate snap-back of wage rates to what they were under the then current multi-employer collective bargaining agreement, known as the National Master Automobile Transporter Agreement (the "NMATA"), which was for a three-year term beginning June 1, 2008 and expiring May 31, 2011. As a result, as of the beginning of June 2010, Allied no longer had the benefit of the wage concessions agreed to in connection with the Allied Plan of Reorganization, and wage rates rose over 15% for Allied's Teamster Employees.

21. The employers who are parties to the NMATA are members of a multi-employer collective bargaining association, known as the National Automobile Transporters Labor

Division ("NATLD"), which is authorized by its employer members to bargain collectively with the Teamsters. When the NMATA for the period June 1, 2008 through May 31, 2011 expired, NATLD agreed to new NMATA for a 51 month term from June 1, 2011 through August 31, 2015 with increases in compensation for all covered employees, including Allied's Teamster Employees. This agreement was entered over Allied's objection but was nevertheless binding on Allied.

E. Allied's Major Credit Facilities

22. The Exit Financing established on the Effective Date of the Allied Plan of Reorganization is still extant as of the commencement of the Chapter 11 Case. This Exit Financing is comprised of two credit facilities which together provide financing of up to \$315 million. The largest facility is the credit facility (the "First Lien Credit Facility"), which provides for up to \$265 million in financing on terms originally set forth in the *Amended and Restated First Lien Secured Super-Priority Debtor in Possession and Exit Credit and Guaranty Agreement*, dated as of March 30, 2007, amended and restated as of May 15, 2007 (the "First Lien Credit Agreement"). The other credit facility (the "Second Lien Credit Facility") provides for up to \$50 million in loans on terms originally set forth in a *Second Lien Secured Super-Priority Debtor in Possession and Exit Credit and Guaranty Agreement*, dated as of May 15, 2007 (the "Second Lien Credit Agreement").

23. The First Lien Credit Facility is secured by a first-priority security interest in substantially all of the Debtors' assets, including accounts, general intangibles, money, inventory, equipment (including Rigs), real estate and the stock of certain subsidiaries (the "Collateral") as granted by an *Amended and Restated Pledge and Security Agreement (First Lien)* dated as of May 15, 2007. The Second Lien Credit Facility is secured by a second-priority

security interest in the Collateral, as granted by an *Amended and Restated Pledge and Security Agreement (Second Lien)* dated as of May 15, 2007. Allied and the collateral agents for the two credit facilities entered an *Intercreditor Agreement* dated as of May 15, 2007 to set forth, among other things, the relative rights and priorities as between these two credit facilities.

24. The First Lien Credit Facility is provided by a group of financial institutions (the "Lenders"), one of which, CIT Group/Business Credit Inc. ("CIT"), has served, but is no longer serving, as administrative and collateral agent of this facility. The First Lien Credit Facility is comprised of the following three facilities: (i) a facility (the "Revolving Loan Facility") for revolving loans and swing line loans (collectively the "Revolving Loans") up to the amount of \$35 million; (ii) a facility (the "Letter of Credit Facility") for the issuance by a bank ("Issuing Bank") of letters of credit ("Letters of Credit") for the account of Allied in the amount of up to \$50 million; and (iii) a Term Loan Facility for loans ("First Lien Term Loans") up to the amount of \$180 million.

25. CIT is the sole Lender under the Revolving Loan Facility Agreement and is not a Lender under the other two facilities. The other Lenders ("First Lien Term Loan Lenders") have made the First Lien Term Loans and deposited up to \$50 million to support the Letter of Credit Facility. CIT asserts that the *Amended and Restated Pledge and Security Agreement (First Lien)* dated as of May 15, 2007 provides for the Revolving Loans to be paid before the Term Loans or the obligations due the First Lien Term Lenders under the Letter of Credit Facility.

26. The Second Lien Credit Facility, which provides for loans ("Second Lien Term Loans") of up to \$50 million, is provided by certain lenders ("Second Lien Lenders"). Goldman Sachs Credit Partners L.P. ("Goldman Sachs") was the original administrative agent

and collateral agent of this facility and was later replaced in these capacities by Bank of New York Mellon.

27. Both the First Lien Credit Facility and the Second Lien Credit Facility provide that lenders ("Requisite Lenders") under each facility with more than 50% of the exposure under the respective facility have certain powers and the right to direct the administrative agent and the collateral agent with respect to certain actions, including whether to waive or exercise remedies if an event of default ("Event of Default") should occur under the respective facility.

F. Administration of the Credit Facility.

28. On May 6, 2008, Yucaipa acquired the face amount of \$40 million of the Second Lien Term Loan and exchanged \$20 million of it for 21,396 shares of preferred stock ("Series A Preferred Stock"), convertible into common stock at a conversion price, whereby each preferred share is valued at \$934.74. In connection with Yucaipa's acquisition of the Second Lien Term Loan, the Second Lien Credit Facility was amended to allow Yucaipa to be an assignee (an "Eligible Assignee") with no restrictions on its right to vote. Yucaipa thereby became the Requisite Lender under the Second Lien Credit Facility.

29. In August 2008, heavily impacted by the sharp downturn that year in OEM Production, Allied notified CIT, as Administrative Agent of the First Lien Credit Facility, that as of June 30, 2008, Allied was in default under that facility in that Allied was not in compliance with certain of its financial covenants in the First Lien Credit Agreement. On September 3, 2008, CIT, as Administrative Agent, sent Allied notice of default and of reservation of rights. Effective September 24, 2008, Allied and CIT entered a Forbearance Agreement, which, as amended, expired on November 15, 2008. On November 24, 2008, CIT sent Allied another notice of default and reservation of rights. However, CIT received no instruction from the

Requisite Lenders to terminate the Credit Facility or to declare the indebtedness thereunder to be due.

30. By April 2009, ComVest Investment Partners III, L.P. ("ComVest") had acquired a majority of the outstanding Lender exposure under First Lien Credit Facility and had thereby become the Requisite Lender. On August 21, 2009, ComVest and Allied entered an amendment ("Fourth Amendment") to the First Lien Credit Agreement to allow Yucaipa to be an Eligible Assignee, with no restriction on its right to vote. In connection with this amendment, Yucaipa purchased from ComVest the majority in face value of the First Lien Exposure. However, CIT declined to recognize the validity of the Fourth Amendment and consequently declined to recognize Yucaipa's status as the Requisite Lender under the First Lien Credit Facility.

31. In November 2009, Allied Systems Holdings, Inc. and Yucaipa sued CIT to establish (1) that Yucaipa became the Requisite Lender in August 2009 and (2) that CIT was damaging Yucaipa and Allied by failing to take action lawfully demanded by Yucaipa as Requisite Lender.

32. In 2009, after General Motors Corporation and Chrysler LLC commenced their bankruptcy cases and shut down most production, in order to preserve Allied's liquidity position, Allied did not make quarterly interest payments due under the First Lien Credit Facility for the third and fourth quarters. Since then, Allied has not made payments due under the First Lien Credit Facility and the Second Lien Credit Facility.

33. Allied Systems Holdings, Inc., Yucaipa and CIT settled the litigation among them with regard to the First Lien Credit Facility pursuant to a Settlement Agreement dated as of December 5, 2011, with the parties filing Mutual Dismissals with Prejudice on December 7, 2011. The terms of the Settlement Agreement include, among others, mutual limited releases;

the recognition of the validity of the Fourth Amendment and of Yucaipa as the Requisite Lender, provisions for the resignation and replacement of CIT as administrative and collateral agent, the recognition, by Allied and Yucaipa, of the payment priority of CIT's revolver over the term loans included in the First Lien Credit Facility, and the reduction of the letter of credit facility.

34. On January 18, 2012, three lenders under the First Lien Credit Facility filed suit against Yucaipa in the Supreme Court of the State of New York, Index No. 650150/2012. These lenders were Black Diamond CLO 2005-1 Ltd., its affiliate BDCM Opportunity Fund II, LP, and Spectrum Investment Partners, L.P. In this suit (the "Black Diamond/Yucaipa Action"), the plaintiffs seek a judicial declaration that the Fourth Amendment is null and void and that Yucaipa is not the Requisite Lender under the First Lien Credit Facility. The grounds for the Black Diamond/Yucaipa Action are similar to those asserted by CIT in the prior action between CIT, Yucaipa and Allied Systems Holdings, Inc. The Black Diamond/Yucaipa Action is still pending.

35. While the Black Diamond/Yucaipa Action was being litigated, Allied was exploring the possibility of a sale of its business.

36. On May 17, 2012, the three plaintiffs in the Black Diamond/Yucaipa Action filed involuntary bankruptcy petitions seeking relief under Chapter 11 against Allied Systems Holdings, Inc. and its Allied Systems Ltd. (L.P.) in the U.S. Bankruptcy Court for the District of Delaware.

37. As of the commencement of the involuntary bankruptcy cases, the outstanding principal amount due under the First Lien Credit Agreement totaled about \$244 million, including about \$35 million due under the Revolving Loan Facility. The First Lien Credit Agreement provides for varying interest rates for its facilities, in addition to a default rate of 2%

over the otherwise applicable rates. Also, as of the commencement of the involuntary cases, the outstanding principal amount due under the Second Lien Term Facility was \$30 million.

38. In light of the involuntary bankruptcy cases and its financial condition, Allied determined that it would be in the best interests of their estates to proceed under Chapter 11. Therefore, Allied Systems Holdings, Inc. and Allied System Ltd. (L.P.) consented to relief under Chapter 11, and caused seventeen direct and indirect subsidiaries of Allied Systems Holdings, Inc. to join them by filing voluntary Chapter 11 petitions.

II.

FIRST DAY MOTIONS

39. In furtherance of the objective of successfully administering this Chapter 11 Case and maximizing value for all creditors, the Debtors have sought approval of the First Day Motions and related orders (the "Proposed Orders"); and respectfully request that the Court consider entering orders granting such First Day Motions.

40. I have reviewed each of the First Day Motions and Proposed Orders (including the exhibits thereto) listed on Exhibit A and the facts set forth therein are true and correct to the best of my knowledge, information, and belief.

41. Moreover, I believe that the relief sought in each of the First Day Motions (a) is vital to enable the Debtor to make the transition to, and operate in, chapter 11 with a minimum of interruption or disruption to its business or loss of productivity or value and (b) constitutes a critical element in achieving the maximization of the Debtors' value.

42. Accordingly, for the reasons stated herein and in each of the First Day Motions, I respectfully request that each of the First Day Motions be granted in its entirety, together with such further relief as the Court deems just and proper.

CONCLUSION

43. I declare under penalty of perjury that I have reviewed the information contained herein and that the information contained herein is true and correct to the best of my information and belief.

Executed on June 10, 2012.

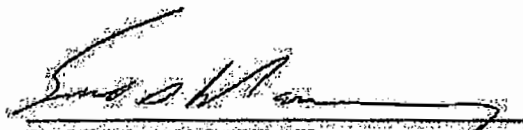

SCOTT D. MACAULAY
Senior Vice President and Chief Financial
Officer, Allied Holdings Systems, Inc.

EXHIBIT A

List of First Day Motions

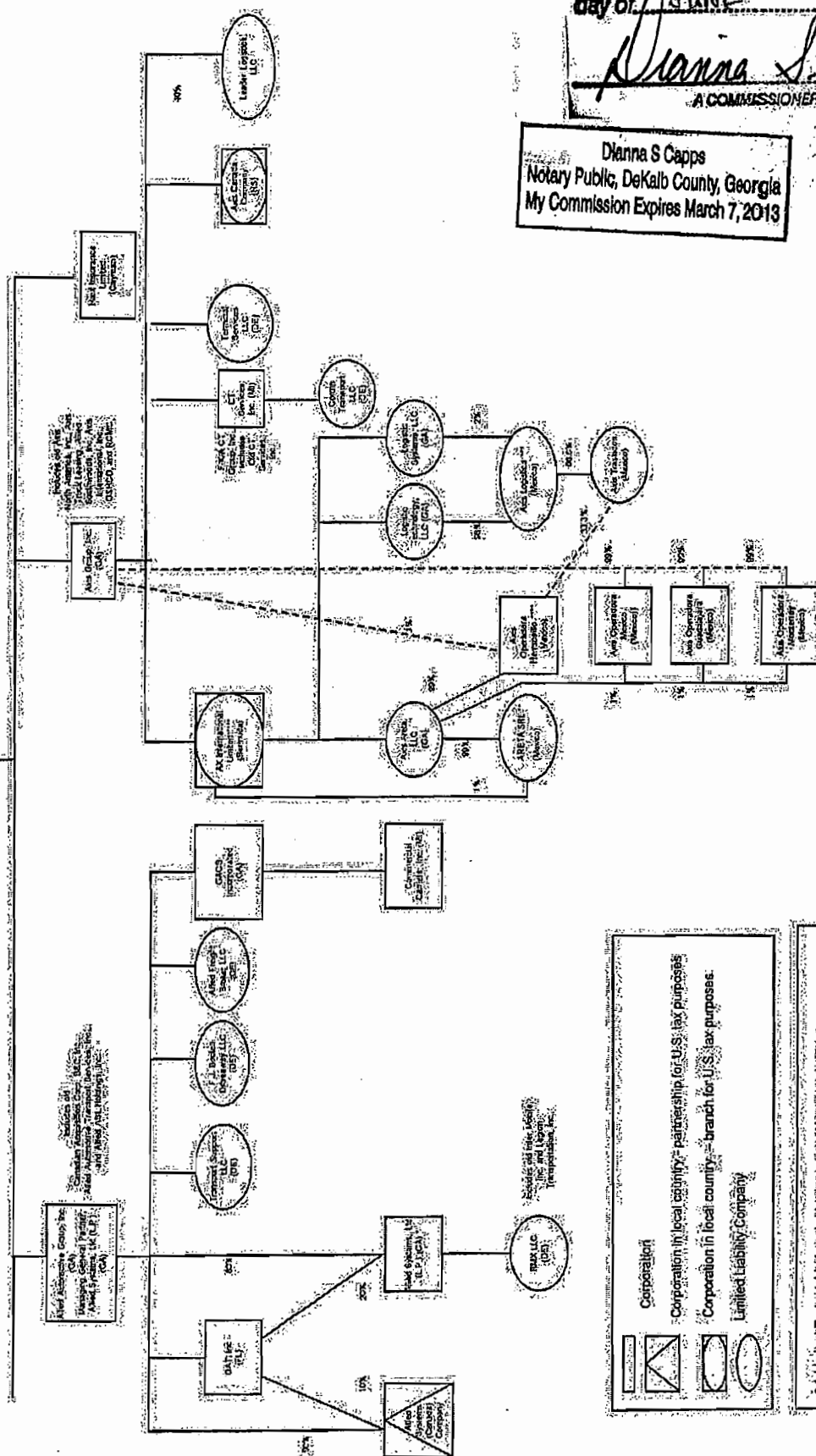
List of First Day Motions

1. Emergency Motion of the Debtors for Bridge Order (I) Authorizing the Use of Cash Collateral, (II) Approving the Continued Use of the Debtors' Cash Management System, (III) Authorizing Debtors to Pay Prepetition Employee Wages and Expenses, and (IV) Granting Related Relief
2. Debtors' Motion for Entry of an Order Directing Joint Administration of Their Related Chapter 11 Cases
3. Application for Order Appointing Rust Consulting/Omni Bankruptcy as Claims and Noticing Agent Pursuant to 28 U.S.C. § 156(c) and Section 105(a) of the Bankruptcy Code *Nunc Pro Tunc* to the Petition Date
4. Motion to Authorize Allied Systems Holdings, Inc. to Act as Foreign Representative of the Debtors
5. Motion for Order (A) Deeming Utilities Adequately Assured of Payment, (B) Prohibiting Utilities from Altering, Refusing, or Discontinuing Services, and (C) Establishing Procedures for Resolving Requests for Additional Assurance
6. Motion for Order Authorizing Debtors to Continue Their Insurance Programs
7. Debtors' Motion for Entry of Interim and Final Orders Authorizing, But Not Directing, the Debtors to Pay Certain Prepetition Claims of Critical Vendors and Granting Certain Related Relief
8. Motion of the Debtors for Order Pursuant to U.S.C. §§ 105(a) and 363(b) Authorizing Payment of Prepetition Customs, Duties and Claims of Common Carriers and Warehousemen and Authorizing the Debtors to Honor Certain Prepetition Cargo Claims and Authorizing Financial Institutions to Honor and Process Checks and Transfers Related to Such Claims
9. Motion of the Debtors for Orders Authorizing the Debtors to Pay Prepetition Sales, Use, and Other Taxes and Related Obligations
10. Motion for Authority to (A) Maintain Existing Cash Management System and Bank Accounts, (B) Continue Use of Existing Checks and Business Forms, (C) Obtain Limited Waiver of § 345(b) and (D) Continue to Make Intercompany Advances with § 364(c)(1) Administrative Priority
11. Motion of Debtors for Interim and Final Orders Authorizing Payment of Pre-Petition Wages, Payroll Taxes, Certain Employee Benefits and Related Expenses, and Other Compensation to Employees and Independent Contractors

12. Motion Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503(b) and 507(a), Fed. R. Bankr. P. 2002, 4001 and 9014 and Del. Bankr. L.R. 4001-2: (I) Authorizing Debtors to (A) Obtain Postpetition Secured DIP Financing and (B) Use Cash Collateral; (II) Granting Superpriority Liens and Providing for Superpriority Administrative Expense Status; (III) Granting Adequate Protection to Prepetition Secured Lenders; (IV) Modifying Automatic Stay; and (V) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)



EXHIBIT B

ALUFO SYSTEMS CORPORATION, INC.
(25)



Dianna S Capps
Notary Public, DeKalb County, Georgia
My Commission Expires March 7, 2013

All Ownership is 100% Unless
Otherwise Indicated

	Corporation
	Corporation in local country - partnership for U.S. tax purposes
	Corporation in local country - branch for U.S. tax purposes
	Limited Liability Company

* A United Partnership, locally built corporation for tax purposes
 ** Arrendadora de Equipo para el Transporte de Automóviles, S. de R. L. de C.V.
 *** Axis Logística, S. de R. L. de C.V.
 **** Axis Operadora Hermosillo S. de C.V.
 ***** Formerly known as Kartainer Internacional Limited

EXHIBIT C

Dianna S. Capps
Notary Public, DeKalb County, Georgia
My Commission Expires March 7, 2013

This is Exhibit 11C referred to in the
affidavit of SCOTT MACAULAY
sworn before me, this 14th
day of JUNE 2012

Dianna S. Capps
A COMMISSIONER FOR FILING AFFIDAVITS

B-5 (Official Form 5) (12/07)

UNITED STATES BANKRUPTCY COURT		IN VOLUNTARY PETITION
District of Delaware		
IN RE (Name of Debtor - If Individual: Last, First, Middle)	ALL OTHER NAMES used by debtor in the last 8 years (include married, maiden, and trade names)	
Allied Systems Holdings, Inc.	Allied Holdings, Inc.	
Last four digits of Social Security or other individual's Tax-I.D. No. (Complete EIN if more than one, state all)		
58-0360550		
STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code)	MAILING ADDRESS OF DEBTOR (If different from street address)	
2711 Centerville Road, Suite 400 Wilmington, Delaware 19808	2302 Parklake Drive, Building 15 Suite 600, Atlanta, GA 30345	
COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS	ZIP CODE	ZIP CODE
New Castle	19808	30345
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from previously listed addresses)		
CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED		
<input type="checkbox"/> Chapter 7 <input checked="" type="checkbox"/> Chapter 11		
INFORMATION REGARDING DEBTOR (Check applicable boxes)		
Nature of Debts (Check one box)	Type of Debtor (Form of Organization)	Nature of Business (Check one box)
Petitioners believe:	<input type="checkbox"/> Individual (Includes Joint Debtor)	<input type="checkbox"/> Health Care Business
<input type="checkbox"/> Debts are primarily consumer debts	<input checked="" type="checkbox"/> Corporation (Includes LLC and LLP)	<input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(c)(1)(B)
<input checked="" type="checkbox"/> Debts are primarily business debts	<input type="checkbox"/> Partnership	<input type="checkbox"/> Railroad
	<input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below)	<input type="checkbox"/> Stockbroker
		<input type="checkbox"/> Commodity Broker
		<input type="checkbox"/> Clearing Bank
		<input checked="" type="checkbox"/> Other
VENUE	FILING FEE (Check one box)	
<input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District	<input checked="" type="checkbox"/> Full Filing Fee Attached	
<input type="checkbox"/> A bankruptcy case concerning debtor's affiliate, general partner or partnership is pending in this District	<input type="checkbox"/> Petitioner is a child support creditor or his representative, and the form specified in § 304(g) of the Bankruptcy Reform Act of 1994 is attached. (If a child support creditor or his representative is a petitioner, and if the petitioner files the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.)	
PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER OR AFFILIATE OF THIS DEBTOR (Report information for any additional cases on attached sheets)		
Name of Debtor	Case Number	Date
Relationship	District	Judge
ALLEGATIONS (Check applicable boxes)		COURT USE ONLY
<input checked="" type="checkbox"/> Petitioner(s) are eligible to file this petition pursuant to 11 U.S.C. § 303(b)		
<input checked="" type="checkbox"/> The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code		
<input checked="" type="checkbox"/> The debtor is generally not paying such debtor's debts as they become due, unless such debts are the subject of a bona fide dispute as to liability or amount		
<input type="checkbox"/> Within 120 days preceding the filing of this petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession		

Name of Debtor: Allied Systems Holdings, Inc.

Case No. _____

TRANSFER OF CLAIM		
<input checked="" type="checkbox"/> Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents that evidence the transfer and any statements that are required under Bankruptcy Rule 1003(n).		
REQUEST FOR RELIEF		
Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.		
Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p><i>[Signature]</i> Signature of Petitioner or Representative (State title) BDCM Opportunity Fund II, LP</p> <p>Name of Petitioner: _____ Date Signed: _____ Stephen H. Deckoff, Managing Principal Name & Mailing: BDCM Opportunity Fund II, LP Address of Individual: By: BDCM Opportunity Fund II, Adviser, L.L.C. Signing in Representative Capacity: One Sound Shore Drive, Suite 200, Greenwich, CT 06830</p> </div> <div style="width: 45%;"> <p><i>[Signature]</i> Signature of Attorney _____ Date _____ Landis Rath & Cobb LLP By: Kern K. Mumford (DE 4186) Name of Attorney Firm (If any): 919 Market St., Suite 1800, Wilmington, DE 19801 Address: (302) 467-4400 Telephone No.:</p> </div> </div>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p><i>[Signature]</i> Signature of Petitioner or Representative (State title) Black Diamond CLO 2005-1 Ltd.</p> <p>Name of Petitioner: _____ Date Signed: _____ Stephen H. Deckoff, Managing Principal Name & Mailing: Black Diamond CLO 2005-1 Ltd. Address of Individual: By: Black Diamond CLO 2005-1 Adviser, L.L.C. Signing in Representative Capacity: One Sound Shore Drive, Suite 200, Greenwich, CT 06830</p> </div> <div style="width: 45%;"> <p><i>[Signature]</i> Signature of Attorney _____ Date _____ Landis Rath & Cobb LLP Name of Attorney Firm (If any): 919 Market St., Suite 1800, Wilmington, DE 19801 Address: (302) 467-4400 Telephone No.:</p> </div> </div>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p><i>[Signature]</i> Signature of Petitioner or Representative (State title) Spectrum Investment Partners LP</p> <p>Name of Petitioner: _____ Date Signed: _____ Jeffrey A. Schiffer, Managing Member Name & Mailing: Spectrum Investment Partners LP Address of Individual: By: Spectrum Group Management L.L.C. Signing in Representative Capacity: 1250 Broadway, 19th Floor, New York, NY 10001</p> </div> <div style="width: 45%;"> <p><i>[Signature]</i> Signature of Attorney _____ Date _____ Landis Rath & Cobb LLP Name of Attorney Firm (If any): 919 Market St., Suite 1800, Wilmington, DE 19801 Address: (302) 467-4400 Telephone No.:</p> </div> </div>		
PETITIONING CREDITORS		
Name and Address of Petitioner: BDCM Opportunity Fund II, LP	Nature of Claim: Bus. debt - loan default	Amount of Claim: At Least \$26.8 million
Name and Address of Petitioner: Black Diamond CLO 2005-1 Ltd.	Nature of Claim: Bus. debt - loan default	Amount of Claim: At Least \$4.5 million
Name and Address of Petitioner: Spectrum Investment Partners LP	Nature of Claim: Bus. debt - loan default	Amount of Claim: At Least \$21.5 million
Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney, and petitioning creditor information in the format above.		Total Amount of Petitioners' Claims: At Least \$52.8 million

0 continuation sheets attached

Name of Debtor: Allied Systems Holdings, Inc.

Case No. _____

TRANSFER OF CLAIM		
<input checked="" type="checkbox"/> Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents that evidence the transfer and any statements that are required under Bankruptcy Rule 1003(a).		
REQUEST FOR RELIEF		
Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.		
Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.		
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<div> <div> <input checked="" type="checkbox"/> </div> <div> <div>Signature of Petitioner or Representative (State title)</div> <div>Black Diamond CLO 2005-1 Ltd.</div> <div>Name of Petitioner</div> <div>Stephen H. Deckoff, Managing Principal</div> <div>Name & Mailing</div> <div>Black Diamond CLO 2005-1 Ltd.</div> <div>Address of Individual</div> <div>By: Black Diamond CLO 2005-1 Adviser, L.L.C.</div> <div>Signing in Representative Capacity</div> <div>One Sound Shore Drive</div> <div>Suite 200</div> <div>Greenwich, CT 06830</div> </div> <div> <div>Signature of Attorney</div> <div>Landis Rath & Cobb LLP</div> <div>Date</div> <div>DE 19801</div> <div>Name of Attorney Firm (If any)</div> <div>919 Market St., Suite 1800 Wilmington, DE 19801</div> <div>Address</div> <div>(302) 467-4400</div> <div>Telephone No.</div> </div> </div>		
<div> <div> <input checked="" type="checkbox"/> </div> <div> <div>Signature of Petitioner or Representative (State title)</div> <div>Spectrum Investment Partners LP</div> <div>Name of Petitioner</div> <div>Jeffrey A. Schaffer, Managing Member</div> <div>Name & Mailing</div> <div>Spectrum Investment Partners LP</div> <div>Address of Individual</div> <div>By: Spectrum Group Management LLC</div> <div>Signing in Representative Capacity</div> <div>1250 Broadway, 19th Floor</div> <div>New York, NY 10001</div> </div> <div> <div>Signature of Attorney</div> <div>Landis Rath & Cobb LLP</div> <div>Date</div> <div>DE 19801</div> <div>Name of Attorney Firm (If any)</div> <div>919 Market St., Suite 1800 Wilmington, DE 19801</div> <div>Address</div> <div>(302) 467-4400</div> <div>Telephone No.</div> </div> </div>		
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0 continuation sheets attached

Date filed: 5/17/12
Docket No. 1

Name of Debtor: Allied Systems, Ltd. (L.P.)

Case No. _____

TRANSFER OF CLAIM		
<input checked="" type="checkbox"/> Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents that evidence the transfer and any statements that are required under Bankruptcy Rule 1003(a).		
REQUEST FOR RELIEF		
Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.		
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0 continuation sheets attached

Name of Debtor: Allied Systems, Ltd. (L.P.)

Case No. _____

TRANSFER OF CLAIM		
<input checked="" type="checkbox"/> Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents that evidence the transfer and any statements that are required under Bankruptcy Rule 1003(a).		
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Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney, and petitioning creditor information in the format above.		Total Amount of Petitioners' Claims: At Least \$52.8 million

☐ continuation sheets attached

EXHIBIT D

This is Exhibit "D" referred to in the
affidavit of SCOTT MACAULAY
sworn before me, this 14th
day of JUNE 20 12

Dianna S. Capps
A COMMISSIONER FOR TAKING AFFIDAVITS

(D) modifying the automatic stay; and

(E) scheduling a final hearing pursuant to Rules 4001(b) and 4001(c) of the Federal

Rules of Bankruptcy Procedures (the "Bankruptcy Rules").

In support of this Motion, the Debtors respectfully represent as follows:

SUMMARY OF RELIEF REQUESTED

The Debtors seek authority to establish a debtor-in-possession delayed draw term loan facility (the "DIP Facility") that provides for postpetition secured loans in an amount not to exceed \$20,000,000 (the "DIP Loan"), subject to the terms and conditions of the DIP Facility Agreement (as hereinafter defined) and the related Credit Documents (as defined in the DIP Facility Agreement). As explained below, Debtors are presenting to this Court a consensual DIP Loan for which requisite consent has been obtained under Debtor's existing credit agreements for the priming liens proposed for the DIP financing.

In accordance with Bankruptcy Rule 4001, below is a summary of the terms of the proposed DIP Facility and the Debtors' use of cash collateral, with references to the relevant Sections of the DIP Facility Agreement:²

- (a) **Borrowers.** Allied Systems Holdings, Inc., a Delaware corporation ("Allied Holdings"), and Allied Systems, Ltd. (L.P.), a Georgia corporation ("Allied Systems"), collectively the "Borrowers";
- (b) **Guarantors.** Each other Debtor in these chapter 11 cases (which are all of Allied Holding's direct and indirect U.S. and Canadian subsidiaries);
- (c) **DIP Agent.** Yucaipa American Alliance Fund II, LLC (the "DIP Agent");
- (d) **DIP Lenders.** Yucaipa American Alliance Fund II, LP and Yucaipa American Alliance (Parallel) Fund II, LP, and any other lender party to the First Lien Facility that elects to participate in the DIP Facility.

² Terms not defined in this summary are defined herein or in the DIP Facility Agreement. All references are to a section of the DIP Financing Agreement unless otherwise indicated.

- (e) Borrowing Limit. Notice, \$20,000,000 in the aggregate during the term of the DIP Facility. During the interim period, the borrowing limit is \$10,000,000. § 2.1(b).
- (f) Interest Rate. LIBOR plus 7.50% per annum, with a floor of 2.50%. Base Rate Loans accrue interest at the Base Rate plus 6.50%, with a floor of 3.50%. The default interest rate is the otherwise applicable interest rate plus 2%. § 2.7.
- (g) Closing. The Closing will occur after the entry of the Interim DIP Order.
- (h) Maturity. One year after the Petition Date.
- (i) Purpose. For Debtors' working capital needs and general corporate purposes, as outlined in the DIP Budget, or as otherwise permitted by the DIP Facility Agreement.
- (j) DIP Budget. The Debtors and the DIP Agents have agreed on a one-year budget (the "DIP Budget"), a copy of which will be attached to the proposed Interim Order and presented at the interim hearing. The DIP Budget reflects the anticipated earnings and expenses of the Debtors for a one-year period. § 6.21.
- (k) 13-week Cash Projections. Every 13 weeks the Debtors shall prepare 13-week projections, which reflect the anticipated receipts and disbursements for such 13-week period, and will be subject to approval by the Requisite Lenders (as defined in the DIP Credit Agreement). The Debtors shall operate within the cash projections, but may vary from such projections so long as they remain in compliance with the Budget Covenant described below. The Cash Projections for the first 13-week period after the Closing Date are referred to as the "Initial Approved Cash Projections," a copy of which will be attached to the proposed Interim Order and presented at the interim hearing.
- (l) Availability. DIP Facility is a delayed draw facility, and thus advances under the DIP Facility may be requested when the Debtors anticipate a shortage of cash collateral to pay timely the expenses reflected in the DIP Budget and to maintain \$5 million of cash on hand. Specifically, the Borrowers may draw to the extent that cash on hand *minus* cash disbursements, as reflected in the Approved Cash Projections for the then current week and the next week, is less than \$5,000,000.
- (m) Priority Claims and Liens. As set forth in § 2.22 of the DIP Facility Agreement, subject only to the Carve-Out, all obligations under the DIP Facility shall, at all times:
 - (A) pursuant to §§ 364(c)(1), 503(b), 507(a)(2) and 507(b) of the Bankruptcy Code, be entitled to super-priority claim status with priority over all other allowed Chapter 11 and Chapter 7 administrative expense claims, including expenses of a Chapter 11 and Chapter 7 trustee (the "DIP Superiority Claims");

- (ii) pursuant to § 364(c)(2) of the Bankruptcy Code, be secured by a perfected first priority lien on all unencumbered property and assets of the Debtors (other than claims or causes of action arising under §§ 544, 545, 547, 548, 550 or 553 of the Bankruptcy Code (collectively, the "Avoidance Actions"); *provided, however*, property as to which a lien is avoided shall be subject to the DIP Lien and, upon entry of the Final DIP Order, the proceeds of Avoidance Actions shall be available to repay the DIP Loan on account of the DIP Superpriority Claim); and
- (iii) pursuant to § 364(d)(1) of the Bankruptcy Code, be secured by a perfected first priority, senior priming lien on all the property of the Debtors of any kind (other than Avoidance Actions and certain permitted prepetition liens, including liens on specific equipment) (the "DIP Collateral"); § 6.2

The liens awarded to the DIP Lenders and the DIP Agent pursuant to subsections (ii) and (iii) are collectively, the "DIP Liens" and the property subject to the DIP Loan is the "DIP Collateral." Thus, the liens of the DIP Lenders shall be senior to the liens that secure the obligations of the Debtors under Prepetition Loan Documents, and such prepetition liens are sometimes referred to in this Motion as the "Primed Liens."

(n) Cash Collateral. May be used in accordance with the DIP Budget.

(o) Adequate Protection to Prepetition Lenders. Subject to the Carve-Out, the DIP Liens and the DIP Superpriority Claim, as adequate protection to the Prepetition Lenders holding Primed Liens, the Prepetition Lenders shall receive the following, allocated first to the First Lien Lender until the First Lien Debt is paid in full, and second to the Second Lien Lenders:

- (i) adequate protection to the extent of any diminution in value of their collateral resulting from the priming of their liens in the form of replacement liens on the DIP Collateral, *provided, however*, that the replacement liens shall not attach to the proceeds of Avoidance Actions (the "Replacement Liens");
- (ii) a claim under § 507(b)(2) of the Bankruptcy Code to the extent of any postpetition deterioration in the value of the Prepetition Collateral;

(p) Carve-Out. (i) Debtor's professionals' fees and expenses as of the date of a Termination Notice, plus up to \$200,000 following the date of the Termination Notice; (ii) Creditors' Committee professionals' fees and expenses as of the date of the Termination Notice in an amount of up to \$100,000, plus up to \$75,000; and (iii) U.S. Trustee's fees pursuant to 28 U.S.C. § 1930. A "Termination

"Notice" is a notice delivered by the DIP Agent that an Event of Default has occurred terminating the commitments and the use of cash collateral. § 8.2

(g) Fees and Expenses.

Commitment Fee: 0.75% per annum on the average undrawn portion of the DIP Facility, payable monthly.

Uplift Fee: \$500,000 (equal to 2.5% of the \$20,000,000 DIP commitment), payable to the DIP Agent for the benefit of the DIP Lenders, earned and payable on the closing of the DIP Facility after entry of the Interim Order.

DIP Agent Fee: \$75,000 payable to the DIP Agent for its own account, earned and payable on the closing of the DIP Facility after entry of the Interim Order.

Expenses. The Debtors shall also pay the reasonable fees and expenses (including legal fees, "DIP Expenses") of the DIP Agent in connection with the DIP Facility. Following an Event of Default, each Lender will also be reimbursed for its expenses in connection with the sale or realization of the DIP Collateral or any workout, including in an insolvency proceeding. § 10.2

(f) Mandatory Repayments: The net cash proceeds received by the Debtors from any sale, transfer or other disposition of assets or property (other than inventory in the ordinary course of business) or any recovery event (such as a casualty or condemnation) shall be applied to permanently reduce the commitment. § 2.11

(s) Yield Protection, Withholding Tax Gross-Up, Indemnity and Increases Costs: Customary for facilities of this nature offering LIBOR interest rates. §§ 2.15 to 2.17

(l) Budget Covenants. Debtors shall comply with Budget Covenant, tested weekly, starting 2 weeks after the petition Date. § 6.21.

(ii) Financial Covenants. Financial covenants consist of: (i) minimum EBITDA, (ii) minimum liquidity, and (iii) a limit on capital expenditures. § 6.7

(v) Committee Challenge Actions: Must be brought within the earlier of 75 days after the Petition Date and 45 days from the date of formation of the Creditors' Committee to file any and all claims and litigation against the DIP Agent, the DIP Lenders, the First Lien Agents or the First Lien Lenders with regard to their Prepetition Liens (collectively, the "Committee Challenge Actions"). No more than \$25,000 of the proceeds of the DIP Facility or the cash collateral may be used for Committee Challenge Actions (the "Committee Challenge Fees").

(w) Indemnification. Extends to the DIP Agent and the DIP Lenders (and their officers, directors, advisors, agents and affiliates) for all Indemnified Liabilities, except to the extent they result from such person's gross negligence or willful misconduct. § 10.3

(x) Events of Default. As described in § 8.1 of the DIP Facility Agreement, include the following:

- (i) failure to make principal and interest payments when due;
- (ii) covenant defaults (including financial or budget covenants);
- (iii) any agent or any lenders under the Prepetition Credit Facilities shall take any action without further order of the Bankruptcy Court or the Canadian Court, to foreclose or exercise remedies in collateral;
- (iv) Dismissal of the Chapter 11 Cases or conversion to a Chapter 7 proceeding, or termination of the recognition proceedings in Canada;
- (v) the filing of a plan of reorganization that fails to require payment in full in cash of all obligations to the DIP Lenders and the DIP Agent under the DIP Agreement or to which the Required DIP Lenders do not consent;
- (vi) any action (a) to obtain additional financing, (b) to authorize financing (including junior financing) secured by the DIP Collateral, or (c) to use cash collateral that is not consented to by the DIP Lenders and the DIP Agent; (ix) any action to approve any sale of the DIP Collateral unless consented to by the Requisite DIP Lenders or such sale pays the DIP Facility in full;
- (vii) the commencement of any lawsuit or action against Yucaipa, any other First Lien Lender, any First Lien Agent or any of their respective affiliates that asserts or seeks, (a) any claim in excess of \$100,000, (b) any legal or equitable remedy that would have the effect of subordinating any or all of the obligations or Liens of any party to the First Lien Credit Facility, or (c) could have a material adverse effect on the rights and remedies of any party to the First Lien Credit Facility;
- (viii) the entry of an order modifying, limiting, subordinating, recharacterizing or avoiding the priority or validity of any indebtedness owed to the DIP Lenders or the First Lien Lenders or the perfection, priority or validity of their liens;

- (ix) the Creditors' Committee or other committee seeks the approval of any subsequent debtor-in-possession facility, and either (a) the Debtors do oppose such application or (b) an order is entered approving such subsequent debtor-in-possession facility that does not pay the DIP Loan in full; or the Debtors seek the approval of any other post-petition facility or loans that do not pay the DIP Loan in full;
 - (x) the appointment of a trustee or examiner with enlarged powers under Chapter 11 or 7 of the Bankruptcy Code, or the appointment of the equivalent officer in Canada with respect to a Canadian Debtor;
 - (xi) the commencement of a lawsuit to disallow the First Lien Debt or to challenge the liens securing that indebtedness; or
 - (xii) the failure to obtain a final order approving the DIP Loan within a specified time period.
- (y) Relief From Automatic Stay. Available upon 5 business days' notice to the Debtors, the Creditors' Committee, the Petitioning Creditors and the U.S. Trustee, §811.

In accordance with Bankruptcy Rule 4001, the Debtors and the DIP Lenders stipulate that items (i) through (o), (p) and (q) listed above shall apply upon entry of an interim order granting this Motion, even if a final order is not entered.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On May 17, 2012, involuntary petitions were filed against Allied Holdings and its subsidiary Allied Systems, Ltd. (L.P.) ("Allied Systems") under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in this Bankruptcy Court (the "Court"). On June 10, 2012, the remaining Debtors filed voluntary petitions in this Court and, in connection