

**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**

**SUPPLEMENTAL AFFIDAVIT OF SCOTT MACAULAY
(Motions for Recognition of Replacement DIP Facility and Bid Procedures)
(sworn June 21, 2013)**

**I, Scott Macaulay, of the City of Snellville 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 US**") and the vice president and treasurer of Allied Systems (Canada) Company ("**Allied Canada**") and the treasurer of Axis Canada Company ("**Axis Canada**", together with Allied Canada, the "**Canadian Debtors**"). Overall, I have been an employee of Allied for the last fifteen (15) 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 supplements my affidavits sworn in connection with the Replacement DIP Motion (defined below) and the Bid Procedures Motion (defined below) by Allied US in its capacity as foreign representative (the "**Applicant**") of Allied US, Allied Canada,

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

- (a) recognizing an order (the "**Final Replacement DIP Financing Order**") of the United States Bankruptcy Court for the District of Delaware (the "**US Court**") which, amongst other things: (i) authorizes the Chapter 11 Debtors to (a) obtain post-petition secured replacement DIP financing and repay in full the existing DIP lending facility and (b) use cash collateral, (ii) grants super-priority liens and provides super-priority administrative expense status, (iii) grants adequate protection to the pre-petition secured lenders and (iv) modifies the automatic stay in the Chapter 11 Cases;
- (b) discharging in full the Existing DIP Lenders' Charge in the manner set out in My Replacement DIP Affidavit (defined below);
- (c) granting the Replacement DIP Lenders' Charge and granting super-priority to the Replacement DIP Lenders' Charge in the manner set out in My Replacement DIP Affidavit;
- (d) amending the Supplemental Order to provide for the granting of the Replacement DIP Lenders' Charge and providing for priority of the Replacement DIP Lenders' Charge as provided in the draft order; and
- (e) recognizing an order ("**Bid Procedures Order**") of the US Court which, amongst other things: (i) approves certain bid procedures (the "**Bid Procedures**") for the assets and business of the Allied Group; (ii) approves the form and manner of notice of an auction for the assets and business of the Allied Group; (iii) schedules a hearing for approval of the sale(s) (the "**Sale(s)**") of assets in the event that an auction is conducted and sets objection and bidding deadlines with respect to such Sale(s); (iv) establishes procedures to determine cure amounts and deadlines for objections for certain contracts and leases to be assumed and assigned by the Chapter 11 Debtors; and (v) grants related relief.

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

4. All capitalized terms used herein and not otherwise defined shall have the meanings given to them in my affidavit sworn on May 28, 2013 in connection with the Replacement DIP Motion (“**My Replacement DIP Affidavit**”) or my affidavit sworn on May 28, 2013 in connection with the Bid Procedures Motion (“**My Bid Procedures Affidavit**”), unless otherwise indicated.

BACKGROUND

5. On June 10, 2012 (the “**Petition Date**”), Allied Systems US and Allied Systems, Ltd. (L.P.) 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 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 Bankruptcy Code with the US Court. 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**”.
6. The Chapter 11 Debtors commenced proceedings pursuant to Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCAA**”), as amended pursuant to the Initial Recognition Order dated June 12, 2012 granted by this Court, which among other things: (i) recognized Allied US as the “foreign representative” of the Chapter 11 Debtors; (ii) declared the Chapter 11 Cases to be a “foreign main proceeding” pursuant to Part IV of the CCAA; and (iii) stayed all proceedings against the Chapter 11 Debtors. Thereafter, this Court granted a Supplemental Order dated June 13, 2012 (as amended and restated, the “**Supplemental Order**”) which, amongst other things, recognized certain orders made in the US Court immediately after the Petitions.
7. On May 17, 2013, the Chapter 11 Debtors filed motions in support of the Final Replacement DIP Financing Order and the Bid Procedures Order (the “**US Motions**”) with a proposed stalking horse agreement, bid procedures and replacement DIP credit agreement. Those motions were scheduled to be heard in the US Court on May 31, 2013 (the “**May 31 Hearing**”).

8. On May 29, 2013, the Chapter 11 Debtors filed with this Court the following:
 - (a) Motion Record dated May 28, 2013 (returnable June 5, 2013) for a motion, *inter alia*, recognizing the Final DIP Replacement Financing Order (“**Replacement DIP Motion**”); and
 - (b) Motion Record dated May 28, 2013 (returnable June 5, 2013) for a motion, *inter alia*, recognizing the Bid Procedures Order (“**Bid Procedures Motion**”).

EVENTS SINCE THE FILING OF THE MOTIONS

9. On or before the objection deadline in the US, a number objections to the US Motions were filed in the US Court including objections from the Official Committee of Unsecured Creditors (the “**Committee**”) and Yucaipa American Alliance Fund I, L.P. and Yucaipa American Alliance (Parallel) Fund I, L.P., (“**Yucaipa**”), as a prepetition secured lender.
10. On May 31, 2013, the US Court indicated that it was not prepared to hear the US Motions in their current form. Immediately, the Chapter 11 Debtors took that message and began working with the Committee, Yucaipa and other petitioning creditors (collectively, the “**Petitioning Creditors**”) to see if consensual agreement on the terms of the Replacement DIP Facility and the Bid Procedures was possible. Those meetings took place over a number of days and included a formal mediation before Judge Drain of the US Court on June 6, 2013.
11. Additionally, the Chapter 11 Debtors needed to urgently address the fact that the term of the Existing DIP Facility was set to expire on June 11, 2013 and it was unlikely that a new arrangement was going to be in place by that date. Due to the ongoing discussions amongst the parties, the Existing DIP Lenders agreed to extend the maturity date to June 30, 2013. The Existing DIP Lenders agreed to extend the maturity date without any additional fees provided that the Chapter 11 Debtors continue to pay interest during such extension.

NOTICE OF FILING MODIFIED DIP REPLACEMENT AGREEMENT AND MODIFIED BID PROCEDURES

12. The Chapter 11 Debtors ultimately reached agreement with the Petitioning Creditors on the terms of a revised replacement DIP agreement (the “**Modified Replacement DIP Agreement**”), which terms were supported by Black Diamond Commercial Finance, L.L.C. and Spectrum Commercial Finance, L.L.C. (“**BD/Spectrum**”) and the Committee. On June 13, 2013, the Chapter 11 Debtors filed with the US Court a Notice of Filing Modified DIP Credit Agreement and Bid Procedures and Hearing Thereon, which included the Modified Replacement DIP Agreement and revised bid procedures (“**Modified Bid Procedures**”), together with blackline comparisons against those originally filed. A copy of the Notice will be attached as an exhibit to an affidavit of Tanya Rocca to be sworn in connection with these motions.

*The Modified Replacement DIP Facility*¹

13. Pursuant to the Modified Replacement DIP Agreement, the DIP Lenders (defined below) will still provide a replacement facility with commitments in the aggregate amount of \$33.5 million with a maturity date of December 31, 2013.
14. In order to address the concerns of the Court and certain objections filed, a number of changes to the Modified Replacement DIP Agreement were agreed to. A summary of the material changes is as follows²:
- (a) the Petitioning Creditors, in their capacity as the lenders under the Modified Replacement DIP Agreement (the “**DIP Lenders**,” as applicable), have agreed to fund a “naked auction” employing the Modified Bid Procedures;
 - (b) the budget for the Committee’s litigation fees and expenses in connection with the Yucaipa Adversary Proceeding will be increased from \$1,500,000 to \$1,850,000;

¹ In the event that there is any conflict or inconsistency between the provisions contained under this paragraph 14 and the provisions contained in the Modified Replacement DIP Agreement, then the provisions of the Modified Replacement DIP Agreement shall prevail.

² Capitalized terms used in this paragraph 14 shall have the meanings given to them in the Modified Replacement DIP Agreement.

- (c) the Committee shall not be required to obtain the DIP Lenders' consent to settlement of any claim or cause of action in the Yucaipa Adversary Proceeding, subject to compliance with the Order (A) Granting Motion of the Official Committee of Unsecured Creditors for Standing to Prosecute Certain Claims of the Chapter 11 Debtors' Estates, (B) Granting Motion of Petitioning Creditors for Leave to Intervene, and (C) Granting Related Relief;
- (d) interest spread on Base Rate Loans shall be reduced from 9.00% to 7.50%, and the spread on Eurodollar Rate Loans shall be reduced from 10.00% to 8.50%;
- (e) the Unused Line Fee will be reduced from 1.5% to .75%;
- (f) the Exit Fee will be reduced from 1.50% to 1.00%; and
- (g) the DIP Lenders will not take liens on Avoidance Actions, provided that Avoidance Actions (and the proceeds thereof) shall be pledged to the prepetition secured lenders as adequate protection against any diminution in value of their collateral.

*The Modified Bid Procedures*³

15. In addition to the changes made to the Modified Replacement DIP Agreement, the Chapter 11 Debtors have proposed a number of changes to the Bid Procedures. Most notably, the proposed bid and auction process no longer contemplates a "stalking horse" agreement, but provides for a "naked auction" based on the terms of the Modified Bid Procedures.
16. Additionally, certain other changes to the Modified Bid Procedures have been proposed. A summary of the material changes is as follows:⁴
- (a) the definition of Consultation Parties is modified to include each of the following:
 - (i) the Committee, (ii) the Petitioning Creditors, (iii) Yucaipa, and (iv) the agent

³ Capitalized terms used in this paragraph 15 shall have the meanings given to them in the Modified Bid Procedures.

⁴ In the event that there is any conflict or inconsistency between the provisions contained under this paragraph 15 and the provisions contained in the Modified Bid Procedures, then the provisions of the Modified Bid Procedures shall prevail.

under any debtor in possession financing facility then in effect, provided, however, that any party submitting a Qualified Bid (or directly or indirectly participating in any Qualified Bid) would cease to be a Consultation Party;

- (b) all references to the Stalking Horse or Stalking Horse Agreement are deleted;
- (c) all Qualified Bids must include cash in an amount sufficient to satisfy in full the Chapter 11 Debtors' obligations under their debtor-in-possession financing facility and fully fund the Chapter 11 Debtors' post-closing wind-down budget, and provide for the assumption of Assumed Liabilities;
- (d) the Chapter 11 Debtors will prepare and file a form asset purchase agreement to be used by all Potential Bidders in preparing and submitting their Qualified Bids;
- (e) Prepetition First Lien Agents, at the direction of Requisite Lenders (as defined in the Prepetition First Lien Loan Agreement) will be a Qualified Bidder and entitled to submit a credit bid at or prior to the Auction (so long as such Qualified Bid otherwise complies with the requirements set forth in the Revised Bid Procedures). For the purposes of the Modified Bid Procedures, Requisite Lenders will be determined by either (i) the Bankruptcy Court at or prior to the Sale Hearing or (ii) with the agreement of the Petitioning Creditors and Yucaipa;
- (f) no individual Prepetition First Lien Lender shall be entitled to credit bid any Obligations held by it under the Prepetition First Lien Credit Agreement;
- (g) in determining the Successful Bidder, the Chapter 11 Debtors (in consultation with the Consultation Parties) shall take into account all relevant factors including, without limitation, the amount of consideration, the assumed liabilities, and the executory contracts to be assumed (including any collective bargaining agreements);
- (h) to the extent a Qualified Bidder includes non-cash consideration as part of its Written Offer, such as the waiver of any right to receive a distribution on account of an allowed claim, then no later than seven (7) business days before the Bid

Deadline, such Qualified Bidder must: (i) identify the form or forms of non-cash consideration that the Qualified Bidder included in any Written Offer, or that may be included in any subsequent Qualified Bid, (ii) provide the Chapter 11 Debtors and the Consultation Parties with the Qualified Bidder's methodology for valuing the non-cash consideration and all supporting documentation to allow the Chapter 11 Debtors and the Consultation Parties to independently confirm that value of the form or forms of non-cash consideration so identified and such additional information requested by the Chapter 11 Debtors or any Consultation Party within two (2) Business Days after such request, and (iii) provide detailed term sheets with respect to the material terms of any such non-cash consideration;

- (i) a Qualified Bidder must obtain consent of certain parties (as set forth in further detail in the Modified Bid Procedures) in order for a Written Offer that includes non-cash consideration to constitute a Qualified Bid;
- (j) the Bid Deadline shall be **5:00 p.m. (Prevailing Eastern Time) on August 8, 2013;**
- (k) the Auction shall be held on **August 14, 2013 at 12:00 p.m. (noon) (Prevailing Eastern Time);** and
- (l) the Sale Hearing will be held on **August 22, 2013 at 1 p.m. (Prevailing Eastern Time).**

THE US MOTIONS

17. Subsequent to the Notice of Filing referred to in paragraph 12, Yucaipa filed an objection seeking to have the US Motions postponed to June 21, 2013. Judge Sontchi denied that request and confirmed the hearing date for the US Motions would be June 19, 2013. Yucaipa filed a supplemental objection to the US Motions on June 18, 2013.
18. The US Motions were heard in the US Court on Wednesday June 19, 2013. Yucaipa objected to the US Motions and proposed their own replacement DIP and bid procedures. Justice Sontchi agreed with the proposal put forth by the Chapter 11 Debtors,

BD/Spectrum and the Committee and approved the Chapter 11 Debtors' Motions. On Friday, June 21, 2013, the US Court approved the Final Replacement DIP Financing Order and the Bid Procedures Order as submitted by the Chapter 11 Debtors.⁵

CONCLUSION

- 19. The Chapter 11 Debtors have been in bankruptcy proceedings for over a year now. Allied's financial and operational performance continues to suffer as a result of remaining in bankruptcy proceedings and they continue to lose material customers, vendors and employees.
- 20. The term of the Existing DIP Credit Agreement will expire on June 30, 2013 and a new arrangement needs to be put in place to address its expiration as well as the Chapter 11 Debtors' additional liquidity needs. The Modified Replacement DIP Agreement and Modified Bid Procedures are a result of a number of arm's length negotiations and are agreed to by the Chapter 11 Debtors and BD/Spectrum and have the support of the Committee. Recognition of the Final Replacement DIP Financing Order will provide the Chapter 11 Debtors with the working capital and time necessary to consummate the sale of all or substantially all of their assets.
- 21. I believe the revised terms of the Modified Bid Procedures and the Modified Replacement DIP Agreement are fair and reasonable in the circumstances.

SWORN before me at the City of Atlanta)
 in the State of Georgia)
 this 21st day of June, 2013)

Dianna S. Capps
 Commissioner for Taking Affidavits or Notary
Dianna S Capps
NOTARY PUBLIC
DeKalb County, GEORGIA
My Commission Expires
3/7/2017

Scott Macaulay
SCOTT MACAULAY

⁵ The Orders were submitted noting outstanding objections from Yucaipa. The US Court signed the Orders submitted with a few changes from the Court.

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

**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**

	<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p style="text-align: center;">Proceeding commenced at Toronto, Ontario, Canada</p>
	<p style="text-align: center;">SUPPLEMENTAL AFFIDAVIT OF SCOTT MACAULAY (Motions for Recognition of Replacement DIP Facility and Bid Procedures) (sworn June 21, 2013)</p>
	<p style="text-align: center;">GOWLINGS LAFLEUR HENDERSON LLP Barristers and Solicitors One First Canadian Place 100 King Street West, Suite 1600 TORONTO, Ontario M5X 1G5</p> <p style="text-align: center;">Jennifer Stam (LSUC#46735J) Telephone: (416) 862-5697 Facsimile: (416) 862-7661</p> <p style="text-align: center;">Lawyers for the Applicant</p>