

**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**

**FACTUM OF THE APPLICANT
(RECOGNITION OF US SALE APPROVALS)
(Motion Returnable October 10, 2013)**

October 8, 2013

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**FACTUM OF THE APPLICANT
(Motion Returnable October 10, 2013)**

PART I – NATURE OF THE MOTIONS

1. This factum is filed in support of a motion brought by Allied Systems Holdings, Inc. (“**Allied US**”, the “**Applicant**” or the “**Foreign Representative**”), in its capacity as foreign representative of Allied US, Allied Systems (Canada) Company (“**Allied Canada**”), Axis Canada Company (“**Axis Canada**”) and those other entities listed on Schedule “A” hereto (collectively, “**Allied**”, the “**Allied Group**” or the “**Chapter 11 Debtors**”) for Orders:
 - (a) recognizing and giving full force and effect to: (i) an order issued by the United States Bankruptcy Court for the District of Delaware (the “**US Court**”) dated September 17, 2013 (the “**US Jack Cooper Sale Approval Order**”) authorizing and approving: (i) the asset purchase agreement dated September 12, 2013 between the Allied Group, as seller and Jack Cooper Holdings Corp. (“**Jack Cooper**”), as purchaser (the “**Jack Cooper APA**”); (ii) the sale of Purchased

Assets (as defined in the Jack Cooper APA) free and clear of all liens, claims, encumbrances and other interests; and, (iii) the assumption and assignment of certain executory contracts and unexpired leases;

- (b) approving the sale pursuant to the Jack Cooper APA of the Purchased Assets (as defined in the Jack Cooper APA) that are owned by Canadian Debtors or situated in Canada (“**Canadian JCT Purchased Assets**”) and vesting all of the Chapter 11 Debtors’ right, title and interest in and to the Canadian JCT Purchased Assets absolutely in Jack Cooper;
- (c) authorizing and approving the assignment to Jack Cooper of the Assigned Contracts (as defined in the Jack Cooper APA) to Jack Cooper to which the Canadian Debtors are parties or that relate to contractual obligations of the Chapter 11 Debtors in Canada (“**Canadian JCT Assigned Contracts**”);
- (d) recognizing and giving full force and effect to: (i) an order issued by the US Court dated September 30, 2013 (the “**US First Lien Agent Sale Approval Order**”) authorizing and approving: (i) the asset purchase agreement dated ■, 2013 between the Allied Group, as seller and an entity (“**NewCo**”), designated by Black Diamond Capital Management, L.L.C. (“**Black Diamond**”)¹ and Spectrum Group Management LLC (“**Spectrum**”)² (collectively, the “**First Lien Agents**”), as purchaser, for the sale of the Excluded Assets (the “**First Lien Agent APA**”); (ii) the sale of assets free and clear of all liens, claims, encumbrances and other interests; and, (iii) the assumption and assignment of a certain unexpired lease;
- (e) approving the sale pursuant to the First Lien Agent APA of the Excluded Assets that are owned by Canadian Debtors or situated in Canada (the “**Canadian Excluded Assets**”) and vesting all of the Chapter 11 Debtors’ right, title and

¹ As collateral agent and co-administrative agent under the Allied Group’s First Lien Facility (as defined below)

² As co-administrative agent under the First Lien Facility

- interest in and to the Canadian Excluded Assets absolutely in NewCo (and/or entities designated by Newco in accordance with the First Lien Agent APA); and
- (f) authorizing and approving the assignment to NewCo (and/or entities designated by Newco in accordance with the First Lien Agent APA) of the Assigned Contracts (as defined in the First Lien Agent APA) to which the Canadian Debtors are parties or that relate to contractual obligations of the Chapter 11 Debtors in Canada (“**Canadian NewCo Assigned Contracts**”, together with Canadian JCT Assigned Contracts, the “**Canadian Assigned Contracts**”).
2. All capitalized terms used herein and not otherwise defined below shall have the meanings given to them in the Affidavit of Scott Macaulay sworn October 3, 2013 pursuant to the Sale Approval Motion (“**Sale Approval Affidavit**”).

PART II- THE FACTS

3. On June 10, 2012, the Chapter 11 Debtors filed involuntary and voluntary petitions with the US Court pursuant to Chapter 11 of title 11 of the United States Bankruptcy Code (the “**Chapter 11 Cases**”).

Sale Approval Affidavit at para 6, Sale Approval Motion Record, Tab 2.

4. The Chapter 11 Debtors commenced proceedings pursuant to Part IV of the CCAA pursuant to the Initial Recognition Order dated June 12, 2012 granted by this Court. In the orders granted by this Court thereafter, *inter alia*: (a) the Chapter 11 Cases were recognized as a “foreign main proceeding” for the purposes of section 47 and 48 of the CCAA; (b) Allied US was appointed as the foreign representative of the Chapter 11 Debtors; (c) certain orders made in the US Court dated June 12, 2012 were recognized; and (d) Duff & Phelps Canada Restructuring Inc. was appointed as the information officer (the “**Information Officer**”). The Orders also authorized the Chapter 11 Debtors to, amongst other things, obtain post-petition financing and use cash collateral on an interim, and later a final, basis.

Sale Approval Affidavit, at para 7, Sale Approval Motion Record, Tab 2.

BID PROCEDURES AND AUCTION PROCESS

5. In accordance with the bid procedures (the “**Bid Procedures**”) approved by order of the US Court on June 21, 2013 (“**US Sale and Bid Procedures Order**”), as recognized and approved by this Court on June 26, 2013, the Chapter 11 Debtors conducted an auction on August 14 – 15, 2013 (“**Initial Auction**”) to determine the highest and best bid for Allied’s assets amongst the two (2) Qualified Bids³ received by the Chapter 11 Debtors. At the conclusion of the Initial Auction, Allied determined that the successful bidder was New Allied Acquisition Co. LLC (“**New Allied**”), an entity established by the First Lien Agents.

Sale Approval Affidavit, at paras. 11-12, Sale Approval Motion Record, Tab 2.

6. Jack Cooper Holdings Corp. (“**Jack Cooper**”), the second qualified bidder, amongst others, filed an objection with the US Court on the basis that the Initial Auction was conducted in violation of the Bid Procedures. Pursuant to the Motion to Reopen brought by the Committee, the US Court approved the Motion to Reopen and another auction was conducted on September 11, 2013 (“**Reopened Auction**”).

Sale Approval Affidavit, at paras. 13-15, Sale Approval Motion Record, Tab 2.

7. At the Reopened Auction, many of the objections filed with the US Court were resolved and Jack Cooper’s revised bid for the purchase of substantially all of the assets of the Allied Group, along with a separate credit bid for the Excluded Assets by NewCo were chosen by the Chapter 11 Debtors as the successful bidders.

Sale Approval Affidavit, at paras. 16-17, Sale Approval Motion Record, Tab 2.

SALE OF ASSETS TO JACK COOPER

8. The Purchase Price provided for under the Jack Cooper APA for substantially all of Allied’s assets is US\$135 million, which is to be comprised of US\$125 million cash and US\$10 million in senior secured notes, or cash.

Sale Approval Affidavit, at para 18, Sale Approval Motion Record, Tab 2.

9. The Purchased Assets being sold to Jack Cooper under the Jack Cooper APA includes substantially all of the assets of the Allied Group with the exception of certain Excluded

³ As defined in the US Sale and Bid Procedures Order

Assets including: (i) six (6) owned real properties of which two (2) are located in Canada; (ii) one (1) leased real property located in New York, NY; and (iii) fifty (50) semi-trailers known as 'lowboys'.

Sale Approval Affidavit, at para 18, Sale Approval Motion Record, Tab 2.

10. In addition, the Assigned Contracts provided for under the Jack Cooper APA will be assumed by the Chapter 11 Debtors and assigned to Jack Cooper. Although the Purchased Assets are being sold free and clear of all Claims and Liens except Assumed Liabilities, this does not affect liabilities existing under the collective agreement with the CAW-Canada, in respect of which, pursuant to s. 6.1 of the Jack Cooper APA, the applicable Employment Offering Purchaser Entity has agreed to assume any and all obligations and responsibilities of Allied Canada in accordance with s. 44 of the *Canada Labour Code*.

Sale Approval Affidavit, at para 25, Sale Approval Motion Record, Tab 2.

Affidavit of Ava Kim sworn October 3, 2013, pursuant to the Motion for Recognition of the US Sale Approvals ("Kim Affidavit") at Exhibit C, Sale Approval Motion Record, Tab 3C.

SALE OF ASSETS TO NEWCO

11. The assets being sold to NewCo under the First Lien Agent APA consists primarily of two (2) Canadian real properties located in Windsor, Ontario and London, Ontario and certain personal property and contracts related to those properties that are Canadian Excluded Assets. The consideration to be paid for the Excluded Assets is to be in the form of the contribution, release or waiver of amounts otherwise due and owing to the lenders under the First Lien Facility.

Sale Approval Affidavit at para. 27, Sale Approval Motion Record, Tab 2.

Kim Affidavit at Exhibit E, Sale Approval Motion Record, Tab 3E.

US SALE HEARING

12. The Sale Hearing for approval of the sale transactions to each of Jack Cooper and New Allied took place on September 17, 2013. Although there were a number of objections raised at the Sale Hearing, including from CAW-Canada, all were resolved or dealt with

by the US Court, including the CAW-Canada objection. The US Court accordingly issued the US Jack Cooper Sale Approval Order on September 17, 2013 and the US First Lien Agent Sale Approval Order on September 30, 2013.

Sale Approval Affidavit at para 29, Sale Approval Motion Record, Tab 2.

PART III – THE ISSUES

- 13. The issues to be determined on this motion are:
 - (a) Whether this Court possesses jurisdiction to recognize and give full force and effect to the US Jack Cooper Sale Approval Order and the US First Lien Agent Sale Approval Order (collectively, the “US Orders”)?
 - (b) Whether this Court should (i) recognize and give full force and effect to the US Orders; and (ii) approve the sale of the Canadian Purchased Assets⁴ and vest all of the Chapter 11 Debtors’ right, title and interest in and to the Canadian Purchased Assets absolutely in each of Jack Cooper and NewCo, as applicable?
 - (c) Whether this Court should authorize and approve the assignment of the Canadian Assigned Contracts to each of Jack Cooper and NewCo, as applicable?

PART IV- THE LAW

(a) THE COURT HAS THE JURISDICTION TO GRANT THE RELIEF SOUGHT

14. Sections 49 and 50 of the CCAA provide this Court with the jurisdiction to recognize and give full force and effect to the US Orders in the context of an application for recognition of a foreign proceeding.

49. (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company’s property or the interests of a creditor or creditors, make any order that it considers appropriate.

⁴ Canadian Purchased Assets shall mean the Canadian JCT Purchased Assets and the Canadian Excluded Assets

...

50. An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

As indicated above, this Court has recognised the Chapter 11 Cases as a “foreign main proceeding” pursuant to sections 47 and 48 of the CCAA.

Companies’ Creditors Arrangement Act, RSC 1985, c C-36, (“CCAA”), ss. 49, 50.

Massachusetts Elephant & Castle Group, Inc, (Re), 2011 ONSC 4201 at para 38, (available on CanLII), (SCJ [Commercial List]) Morawetz J, Applicant’s Brief of Authorities (“BOA”), Tab 1.

Initial Recognition Order of Justice Morawetz made on June 12, 2012 at para 3, BOA, Tab 2.

15. In Part IV cases, where an order recognizing a foreign proceeding is made, the CCAA permits the court to make any order that it considers appropriate if the court is satisfied that the order is necessary for the protection of the debtor company’s property or the interests of a creditor or creditors. An order under Part IV may be made on any terms and conditions that the court considers appropriate in the circumstances. Section 61 of the CCAA provides that the court may apply legal or equitable rules and may consider public policy when deciding whether foreign insolvency orders should be recognized.

61. (1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

(2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

CCAA, ss 49, 50, 61.

16. The public policy exception is “intended to be invoked only under exceptional circumstances concerning matters of fundamental importance”. According to US case law, nothing more than a fair and impartial proceeding is required by Subchapter §1506 of Chapter 15 of Title 11 of the United States Bankruptcy Court or any other law.

UNCITRAL Model Law on Cross-Border Insolvency, at Article 6, BOA Tab 11.

In re Muscletech Research and Development Inc., et al., (No. 06 Civ 538 (JSR) at para 45; and *In re RSM Richter Inc., as Foreign Representative of Muscletech Research and Development Inc. and its Subsidiaries* (No. 06 Civ 539 (JSR), United States District Court, S.D. New York, BOA, Tab 3.

- 17. This Court has held, in agreement with the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency, that the public policy exception is to be interpreted restrictively.

Hartford Computer Hardware, Inc (Re), 2012 ONSC 964 at paras 16-18, (available on CanLII), (SCJ [Commercial List]) Morawetz J, BOA, Tab 4.

The Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency, at paras 86-89, BOA, Tab 11.

- 18. Based on the foregoing, it is clear that (i) this Court has the jurisdiction and authority to hear these motions and grant the relief sought; and (ii) there is no basis for the public policy exception.

(b) IT IS APPROPRIATE TO RECOGNIZE THE US ORDERS AND VEST ALL OF ALLIED’S RIGHT, TITLE AND INTEREST IN AND TO THE CANADIAN PURCHASED ASSETS ABSOLUTELY IN EACH OF JACK COOPER AND NEWCO, AS APPLICABLE

Canadian Courts have Recognized US Orders for Sale Approvals in other Part IV Proceedings

- 19. Canadian Courts have recognized orders made by foreign courts authorizing the sale of property of debtors’ estates in foreign proceedings and vested all right, title and interest in and to Canadian assets to proposed purchasers.

Recognition, Approval and Vesting Order of Justice Morawetz made on March 12, 2012, Hartford Computer Hardware, Inc. Court File Number CV-11-9514-00CL, BOA, Tab 5.

White Birch Paper Holding Company, 2010 QCCS 4915 at paras 3, 5-7, 11, (available on CanLII), (QSC [Commercial Division]) Mongeon J, BOA, Tab 6.

Recognition Order of Justice Morawetz made on April 7, 2009, Nortel Network Corporation et al. Court File Number 09-CL-7950, BOA, Tab 7.

Approval and Vesting Order of Justice Morawetz made on March 30, 2009, Nortel Network Corporation et al. Court File Number 09-CL-7950, BOA, Tab 8.

Recognition Order of Justice Morawetz made on November 6, 2009, Nortel Network Corporation et al. Court File Number 09-CL-7950, BOA, Tab 9.

Approval and Vesting Order of Justice Morawetz made on September 17, 2009, Nortel Network Corporation et al. Court File Number 09-CL-7950, BOA, Tab 10.

The Sale to Jack Cooper of the Canadian JCT Purchased Assets is not contrary to the CCAA

20. Section 36 of the CCAA expressly permits the sale of substantially all of the debtors' assets in the absence of a plan and sets out certain factors to be considered on such a sale:

Restriction on disposition of business assets

36. (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

.....⁵

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction - employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.

The Effect of the Proposed Sale on Creditors and other Interested Parties

21. Notice of this sale approval motion has been served on all secured creditors of the Allied Group. In addition, there has been extensive service of the Sale Approval Motion Record as evidenced by the attached services lists. The lenders under the First Lien Facility participated extensively in the sale process. The First Lien Agent is the successful bidder for the Excluded Assets.

Sale Approval Affidavit, at paras 11, 17, 30-31, Sale Approval Motion Record, Tab 2

22. In addition to the secured creditors of Allied, the broadest range of other creditors and stakeholders were on notice of the proceedings giving rise to the US Jack Cooper Sale Approval Order.

Kim Affidavit, Exhibit “B”, para H, Sale Approval Motion Record, Tab 3B

23. This motion has also been served upon CAW-Canada, representatives of Allied’s Canadian pension plans, relevant Canadian pension plan regulators, Canadian taxation authorities, including CRA and relevant Canadian environmental regulators. No objections to the relief sought have been raised by any of these (or any other) parties.

Sale Approval Affidavit, at paras. 30 and 31, Sale Approval Motion Record, Tab 2

⁵ Ss.’s 36(4) and 36(5) provides restrictions and certain requirements that must be met if the proposed purchaser is a ‘related person’

24. Other than the three personal property security registrants noted in paragraph 30 of the Sale Approval Affidavit, whose claims if any will be dealt with through the wind-down budget contemplated under the Jack Cooper APA and the US Jack Cooper Sale Approval Order, Allied is not aware of any other unpaid Canadian claims that have priority to the claims of the DIP Lenders and the First Lien Agents. Allied has remained current on its remittances to tax authorities, including its remittance of source deductions to CRA and is current on payment of wages to its employees and remittance of pension plan contributions to its Canadian pension plans. Under the Jack Cooper APA, amounts accrued but unpaid for wages and for health, welfare and pension contributions will be paid by Jack Cooper.

Sale Approval Affidavit, paras. 30 and 31, Sale Approval Motion Record, Tab 2

Kim Affidavit, Exhibit "B" at para. 54, para H, Sale Approval Motion Record, Tab 3B

The Process Leading up to the Sale was Reasonable

25. Upon numerous objections being filed with the US Court after the completion of the Initial Auction, the US Court re-opened the auction to ensure a fair process was conducted, including ensuring that the Bid Procedures approved by the US Court and this Court were followed. Through the course of negotiations at the Reopened Auction, the Chapter 11 Debtors were able to choose two (2) successful bids, the terms of which simultaneously resulted in a large number of the objections previously filed in the US Court being resolved and an increased overall sale price of Allied's assets.

Sale Approval Affidavit, at paras 13-17, Sale Approval Motion Record, Tab 2

26. Jack Cooper has a long history of being in the business of light vehicle transportation and has long-term relationships with most of its customers including General Motors Company, Ford Motor Company and Toyota Motor Sales, Inc. It is the largest transporter of light vehicles in North America based on revenue and is well-financed.

Sale Approval Affidavit at paras. 19-22, Sale Approval Motion Record, Tab 2

The Consideration for the Purchased Assets is Fair and Reasonable

27. After hearing extensive submissions by the Allied Group and the remainder of its stakeholders, including CAW-Canada, the US Court was satisfied with the overall sale process and the value received for the Purchased Assets and therein granted the US Orders. The Information Officer has stated in the Eighth Report to this Court in support of this motion that the transactions under the Jack Cooper APA and the First Lien Agent APA maximizes value for Allied's businesses and assets, including those of the Canadian Debtors, while providing for continuity of Allied's business, including preserving jobs for the Canadian Debtors' employees.

Sale Approval Affidavit, at para 29, Sale Approval Motion Record, Tab 2

Eighth Report of the Information Officer dated October 8, 2013 at section 3.7

(c) IT IS APPROPRIATE TO AUTHORIZE THE ASSIGNMENT OF THE CANADIAN ASSIGNED CONTRACTS TO EACH OF JACK COOPER NEWCO, AS APPLICABLE

Canadian Courts have Recognized US Orders for Assignment of Agreements in other Part IV Proceedings

28. Canadian Courts have recognized orders made by foreign courts authorizing the assignment of agreements to proposed purchasers.

Recognition, Approval and Vesting Order of Justice Morawetz made on March 12, 2012, Hartford Computer Hardware, Inc. Court File Number CV-11-9514-00CL, BOA, Tab 5.

Recognition Order of Justice Morawetz made on April 7, 2009, Nortel Network Corporation et al. Court File Number 09-CL-7950, BOA, Tab 7.

Recognition Order of Justice Morawetz made on November 6, 2009, Nortel Network Corporation et al. Court File Number 09-CL-7950, BOA, Tab 9.

The Proposed Contract Assignment Process is not contrary to the CCAA

29. The CCAA allows the court to make orders assigning rights and obligations of debtor companies under agreements upon notice to every party to an agreement and the monitor. Factors to be considered in deciding whether to make the order requested include, but are not limited to:

- (a) whether the monitor approved the proposed assignment;

- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) whether it would be appropriate to assign the rights and obligations to that person.

CCAA, s 11.3

30. All of the Canadian contract counterparties have been served with the Sale Approval Motion Record on October 3, 2013. Further, the US Jack Cooper Sale Approval Order states that Jack Cooper has demonstrated adequate assurance of future performance with respect to the Assigned Contracts and that Jack Cooper shall pay all cure costs associated with the Assigned Contracts promptly after closing the sale transaction under the Jack Cooper APA.

Eighth Report of the Information Officer dated October 8, 2013 at section 3.5

31. The assignment of the Canadian Assigned Contracts does not disadvantage the Canadian contract counterparties, nor is the proposed process contrary to the CCAA or in violation of public policy. The approval of the US Orders authorizing the assignment of the Assigned Contracts, including the Canadian Assigned Contracts was fair and reasonable and therefore, the recognition of the US Orders appropriate in the circumstances.

CONCLUSION

32. The motion for approval of the sale transactions under the Jack Cooper APA and the First Lien Agent APA have been served broadly to all interested parties and no objections have been received. Jack Cooper is a well-known light vehicle transporter with a strong reputation and a long-standing history in its industry. Approving the sale of substantially all of the assets of the Allied Group to Jack Cooper will maximize the value of Allied's business and assets and preserve jobs for the Canadian Debtors' employees.
33. The US Court has heard a full contested motion on and has, having considered those objections, approved the US Orders. The Applicant is seeking Orders recognizing: (i) the US Orders; (ii) approving the sale of the Canadian Purchased Assets and vesting all of the Chapter 11 Debtors' right, title and interest in and to the Canadian Purchased Assets absolutely in Jack Cooper and NewCo, as applicable; and (iii) authorizing and approving

the assignment of the Canadian Assigned Contracts to Jack Cooper and NewCo, as applicable.

34. In these circumstances, it is appropriate that this Court recognize and give full force and effect to the US Orders. There are no provisions in the US Orders that would be inconsistent with the provisions of the CCAA or that would raise public policy exceptions referenced in section 61 of the CCAA.

PART V – RELIEF REQUESTED

35. The Applicant requests that this Honourable Court grant the Orders recognizing the US Orders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of October, 2013.



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Lawyers for the Applicant

TO: THE ATTACHED SERVICE LISTS

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

SCHEDULE B – LIST OF AUTHORITIES

1. *Massachusetts Elephant & Castle Group, Inc (Re)*, 2011 ONSC 4201.
2. Initial Recognition Order of Justice Morawetz made on June 12, 2012.
3. *In re Muscletech Research and Development Inc., et al.*, (No. 06 Civ 538 (JSR); and *In re RSM Richter Inc., as Foreign Representative of Muscletech Research and Development Inc. and its Subsidiaries* (No. 06 Civ 539 (JSR), United States District Court, S.D. New York.
4. *Hartford Computer Hardware Inc (Re)*, 2012 ONSC 964.
5. Recognition, Approval and Vesting Order of Justice Morawetz made on March 12, 2012, Hartford Computer Hardware, Inc. Court File Number CV-11-9514-00CL
6. *White Birch Paper Holding Company*, 2010 QCCS 4915.
7. Recognition Order of Justice Morawetz made on April 7, 2009, Nortel Network Corporation et al. Court File Number 09-CL-7950
8. Approval and Vesting Order of Justice Morawetz made on March 30, 2009, Nortel Network Corporation et al. Court File Number 09-CL-7950
9. Recognition Order of Justice Morawetz made on November 6, 2009, Nortel Network Corporation et al. Court File Number 09-CL-7950
10. Approval and Vesting Order of Justice Morawetz made on September 17, 2009, Nortel Network Corporation et al. Court File Number 09-CL-7950
11. Article 6 of the UNCITRAL Model Law on Cross-Border Insolvency and The Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency.

SCHEDULE C – STATUTES

Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36

Assignment of agreements

11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

Exceptions

(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

(a) an agreement entered into on or after the day on which proceedings commence under this Act;

(b) an eligible financial contract; or

(c) a collective agreement.

Factors to be considered

(3) In deciding whether to make the order, the court is to consider, among other things,

(a) whether the monitor approved the proposed assignment;

(b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and

(c) whether it would be appropriate to assign the rights and obligations to that person.

Restriction

(4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

Copy of order

(5) The applicant is to send a copy of the order to every party to the agreement.

...

Restriction on disposition of business assets

36. (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

- (3) In deciding whether to grant the authorization, the court is to consider, among other things,
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - (d) the extent to which the creditors were consulted;
 - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

- (4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that
- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
 - (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

- (5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.

...

Order recognizing foreign proceeding

47. (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

Nature of foreign proceeding to be specified

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

Order relating to recognition of a foreign main proceeding

48. (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and
- (d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that

relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

Scope of order

(2) The order made under subsection (1) must be consistent with any order that may be made under this Act.

When subsection (1) does not apply

(3) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor company at the time the order recognizing the foreign proceeding is made.

Application of this and other Acts

(4) Nothing in subsection (1) precludes the debtor company from commencing or continuing proceedings under this Act, the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act in respect of the debtor company.

Other orders

49. (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

(a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act in respect of the debtor company.

Terms and conditions of orders

50. An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

...

Court not prevented from applying certain rules

61. (1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

Public policy exception

(2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

**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

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

**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,
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"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

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

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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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
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Court File No.: 12- CV-9757-00CL

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

Proceeding commenced at Toronto, Ontario Canada

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