

**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 (collectively, the "Debtors")

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

**TO THE SERVICE LIST**

We act for KSV Kofman Inc. (formerly Duff & Phelps Canada Restructuring Inc.<sup>1</sup>), in its capacity as the Court-appointed Information Officer in this proceeding (the "Information Officer").

Pursuant to the Order of the Ontario Superior Court of Justice (the "Court") dated June 13, 2012 made in these proceedings, the Information Officer is required to report to the Court at least once every three months.

Capitalized terms used herein are as defined in the Information Officer's Twelfth Report to Court dated July 16, 2015 (the "Twelfth Report").

In its Twelfth Report, the Information Officer summarized the Joint Plan of Reorganization (the "Plan") proposed by the Debtors, the Committee and Black Diamond/Spectrum which was filed with the U.S. Court on May 4, 2015 and amended on June 17, 2015. The Plan is applicable to all creditors of the Debtors, including creditors of the Canadian Debtors.

On September 10, 2015, the U.S. Court held a hearing ("Confirmation Hearing") to consider confirmation of the Plan. Several objections were filed prior to the hearing; however, all but the following two objections were resolved consensually:

- a) an objection from the Official Committee of Medical Benefits Retirees with respect to termination of retiree benefits; and

---

<sup>1</sup> On June 30, 2015, Duff & Phelps Canada Restructuring Inc. ("D&P") was acquired by KSV Kofman Inc. ("KSV"). Pursuant to an Order of the Court made on July 10, 2015, D&P's ongoing mandates were transferred to KSV, including acting as Information Officer in these proceedings. The professionals overseeing this mandate prior to June 30, 2015 remain unchanged.

- b) an objection from the United States Trustee with respect to the scope of certain exculpatory provisions in the Plan (together, the "Plan Objections").

Following arguments from counsel for the objecting parties and Plan proponents, the U.S. Court sustained the Plan Objections and postponed the hearing to consider confirmation of the Plan until October 29, 2015. Additional details related to the Plan and the Confirmation Hearing are provided in the attached article.

The Information Officer understands that the Debtors are considering certain amendments to the Plan to address the Plan Objections and that the Debtors have made a proposal to the retiree committee to resolve its objection.

Should you have any questions or concerns with respect to this or any other matter, please feel free to contact Clifton Prophet of Gowling Lafleur Henderson LLP (Canadian counsel to the Debtors) at 416-862-3509, Mitch Vininsky of KSV Kofman Inc. at 416-932-6013 or the undersigned.

October 15, 2015

**Norton Rose Canada LLP**

Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84  
Toronto, Ontario M5J 2Z4 CANADA

**Tony Reyes** LSUC#: 28218V

Tel: 416.216.4825

Email: [Tony.Reyes@nortonrose.com](mailto:Tony.Reyes@nortonrose.com)

**Evan Cobb** LSUC#: 55787N

Tel: 416.216.1929

Email: [Evan.Cobb@nortonrose.com](mailto:Evan.Cobb@nortonrose.com)

Fax: 416.216.3930

Lawyers for the Information Officer,  
KSV Kofman Inc.

## **Schedule A**

**AAINC Corporation (f/k/a Allied Automotive Group, Inc.)**

**AFBLLC LLC (f/k/a Allied Freight Broker LLC)**

**ASLTD L.P. (f/k/a Allied Systems, Ltd. (L.P.))**

**AXALLC LLC (f/k/a Axis Areta, LLC)**

**AXGINC Corporation (f/k/a Axis Group, Inc.)**

**Commercial Carriers, Inc.**

**CTSINC Corporation (f/k/a CT Services, Inc.)**

**CTLLC (f/k/a Cordin Transport LLC)**

**F.J. Boutell Driveaway LLC**

**GACS Incorporated**

**Logistic Systems, LLC**

**Logistic Technology, LLC**

**QAT, Inc.**

**RMX LLC**

**Transport Support LLC**

**Terminal Services LLC**

- [Search legal jobs](#)
- [Learn more about Law360](#)
- [Read testimonials](#)
- [Contact Law360](#)
- [Sign up for our newsletters](#)
- [Site Map](#)
- [Help](#)

## Allied Systems Estate Falls Short Of Ch. 11 Confirmation

By **Matt Chiappardi**

Law360, Wilmington (September 10, 2015, 10:03 PM ET) -- A Delaware bankruptcy judge declined Thursday to confirm the Chapter 11 plan for the [Allied Systems Holdings Inc.](#) estate, siding with a group of retirees who objected to the debtor's attempt to terminate their benefits.

During a hearing in Wilmington, U.S. Bankruptcy Judge Christopher S. Sontchi sustained the objection of the official committee of medical benefits retirees that the Allied estate was attempting to cut off their benefits without going through several processes under the Bankruptcy Code, including a showing that it was necessary for reorganization, even after ruling that several other provisions of the Chapter 11 plan did meet the requirements for confirmation.

The surprise ruling came after several warring factions in the car hauler's highly contentious nearly three-year-old bankruptcy — which had been dominated by fights between competing lenders The Yucaipa Cos. LLC on one side and [Black Diamond Capital Management LLC](#) and Spectrum Investment Partners LP on the other — laid down their arms temporarily to support confirmation of a Chapter 11 plan.

“My hands are tied,” the judge said from the bench. “As much as I support the coming together of parties on a plan, I simply cannot provide you with the relief you are seeking.”

At issue are medical benefits for roughly 40 workers who retired from Allied, Automotive Carrier System of [Ryder System Inc.](#), Haulaway and Delavan that the debtor was at one point looking to terminate through its Chapter 11 plan.

The retiree committee objected, arguing that the Allied estate couldn't ax payment of the benefits, many of which it said were promised to the workers for the rest of their lives, without going through a set of procedures set out under Section 1114 of the Bankruptcy Code that includes the debtor reaching out to an authorized representative of the retirees to negotiate potential changes.

The Allied estate tried to move the termination issue back so that it wouldn't be considered as part of the Chapter 11 plan confirmation process, but the committee maintained its objection because the 1114 requirement would still not be met.

In an unrelated objection, the U.S. Trustee's Office took issue with the scope of some exculpation provisions in the plan for non-estate fiduciaries.

Judge Sontchi also sustained part of that challenge ruling that exculpations “are not available in any circumstance for any party that is not an estate fiduciary.”

But the judge did say that the Allied estate had met confirmation requirements in several areas, and would only accept additional objections on the plan if material changes were made to address the retiree benefits issue.

Attorneys for the Allied estate said they intended to come back before the court to take a second swing at confirmation, but a date had not yet been scheduled.

The plan aims in part to divvy up the \$135 million in proceeds the Atlanta car hauler realized when it sold its assets to rival Jack Cooper Holdings Corp. in a bankruptcy auction in 2013, as well as set up a litigation trust to augment recoveries for creditors.

Allied filed for Chapter 11 protection in 2012, and the case has been fraught with a maelstrom of litigation since they say it began.

The proceeding itself was sparked by an involuntary petition from Black Diamond and Spectrum, with the battle between them and Yucaipa, which at one point held a roughly 70 percent equity stake in the car hauler, stretching back at least three years prior when Allied took on \$265 million in first-lien debt as an exit facility from a previous bankruptcy.

The two sides also brawled over who was the so-called requisite lender, a designation that allows the holder to modify loan terms without other creditors’ consent, on the facility, and Yucaipa also filed a racketeering lawsuit against Black Diamond and Spectrum in New York.

Judge Sontchi ruled in Black Diamond and Spectrum’s favor on the requisite lender issue, but Yucaipa appealed and the challenge remains pending before the district court in Delaware.

Yucaipa also fought with Black Diamond and Spectrum over mutual efforts to subordinate each other's claims. In August, Judge Sontchi dismissed Yucaipa's part of the subordination fight, ruling that the litigation was barred by a covenant not to sue and the allegations weren't plausible.

Yucaipa's fight with Black Diamond and Spectrum continues in other venues, but the sides had agreed to a temporary truce to allow an Allied Chapter 11 plan to come together.

The Allied estate is represented by Mark D. Collins, Robert J. Stearn Jr. and Marisa A. Terranova of Richards Layton & Finger PA, and Jeffrey W. Kelley and Matthew R. Brooks of Troutman Sanders LLP.

The retiree committee is represented by Bruce Grohsgal of Widener University.

The case is In re: ASHINC Corp. et al., case number 1:12-bk-11564, in the U.S. Bankruptcy Court for the District of Delaware.

--Editing by Philip Shea.

## Related Articles