

Court File No. 05-CL-6007

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 18.6 OF THE  
COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36

AND IN THE MATTER OF ALLIED HOLDINGS, INC. AND  
THOSE SUBSIDIARIES LISTED ON SCHEDULE "A" HERETO

AND IN THE MATTER OF an action pending in the  
QUEBEC SUPERIOR COURT OF JUSTICE

Court file No. 500-17-015722-039

B E T W E E N:

COMPAGNIE D'ASSURANCE DAIMLERCHRYSLER/  
DAIMLER CHRYSLER INSURANCE COMPANY

Plaintiff

- and -

ALLIED SYSTEMS (CANADA) COMPANY

Defendant

NOTICE OF MOTION

THE CREDITOR/PLAINTIFF in the Quebec Superior Court Action, Court File No. 500-17-015722-039 ("the Quebec action"), Compagnie D'Assurance DaimlerChrysler/DaimlerChrysler Insurance Company (hereinafter referred collectively as "DaimlerChrysler"), will make a motion to the Commercial Court on Thursday the

13<sup>th</sup> day of July, 2006 at 10:00 a.m., or as soon after that time as the motion can be heard, at the Commercial Court at 393 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order lifting the stay of proceedings in the Quebec Action for the sole purpose of permitting the Honourable Madam Justice Lebel or another Honourable Justice of the Quebec Superior Court to render a decision on the motion, which was heard by the Honourable Madam Justice Lebel on December 19, 2005, to compel the defendant to disclose the identity of any and all liability insurers and full particulars of any liability policies in Canada as of October 27, 2002.
2. In the alternative, an Order directing the defendant in the Quebec Action to disclose the identity of any and all liability insurers, along with full particulars, including the policy number(s) of any CGL policies, automobile liability insurance policies and/or cargo insurance policies as of October 27, 2002 in Canada.
3. Such further and other relief as counsel may advise and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Quebec action arises as a result of the theft of two motor vehicles, which occurred on October 27, 2002, due to the negligence of the defendant in the Quebec action.

2. The Quebec action was commenced on July 9, 2003 as against Allied Systems (Canada) Company, a subsidiary of Allied Holdings Inc.
3. On August 2, 2005, the Ontario Superior Court of Justice (Commercial List) granted an Order recognizing bankruptcy proceedings commenced under Chapter 11 of the United States Bankruptcy Code and granted an Order staying all proceedings against Allied Holdings Inc. and its subsidiaries in Canada, pursuant to section 18.6 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.
4. On November 17, 2005, the plaintiff in the Quebec action was notified that pursuant to the Recognition Order of the Ontario Superior Court of Justice, there was a stay of proceedings of all actions against Allied Holdings Inc. or its subsidiaries and, accordingly, the Quebec action was stayed.
5. The Quebec action appears to remain under a stay of proceedings.
6. The plaintiff in the Quebec action wishes to bring an action directly against the insurer of the defendant in the Quebec action.
7. Article 2501 of the *Quebec Civil Code* R.S.Q., c. C-1991 permits an injured party to bring an action directly against an insurer.
8. The defendant in the Quebec action has refused to provide disclosure of the identity of any liability insurers
9. On December 19, 2005, the plaintiff in the Quebec action brought a motion before Madam Justice Lebel to compel the defendant to disclose the identity of any liability insurers and the particulars of any liability insurance policies which were in effect at the time of the loss at issue.

10. After hearing the motion, the Honourable Madam Justice Lebel suspended the adjudication of the motion to allow the plaintiff in the Quebec action to address itself to the Superior Court of Ontario, herein, to obtain permission to present the motion to the Quebec Superior Court.
11. The lifting of the stay of proceedings for the sole purpose of ordering the disclosure of the identity of liability insurers and particulars of any liability insurance policies, so that the plaintiff in the Quebec action may bring an action directly against any liability insurer(s), will not cause any prejudice to the creditors of the defendant nor will it affect the viability of any distribution plan.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Affidavit of William J. McCorriston and all exhibits attached thereto;
2. The Affidavit of Jean-Francois Lepine and all exhibits attached thereto;
3. Such further and other material as counsel may advise and this Honourable Court may permit.

July 7, 2006

**HUGHES AMYS LLP**  
Barristers & Solicitors  
48 Yonge Street, Suite 200  
Toronto, Ontario M5E 1G6

William J. McCorriston  
LSUC #22115A  
Tel: (416) 367-1608  
Fax: (416) 367-8821  
Solicitors for the Plaintiff

TO: **GOWLING LAFLEUR HENDERSON LLP**  
Barristers & Solicitors  
First Canadian Place  
100 King Street West, Suite 1600  
Toronto, Ontario M5X 1G5

**Health P. L. Whiteley**  
Tel: (416) 862-4400  
Fax: (416) 863-3403  
Solicitors for the Defendant