

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:

ALLIED HOLDINGS, INC., et al.

Debtors.

Chapter 11

**Case Nos. 05-12515 through 05-12526
and 05-12528 through 05-12537**

Jointly Administered

Judge Mullins

**DEBTORS' MOTION FOR AUTHORITY TO ENTER INTO INSURANCE
RENEWAL AGREEMENT WITH NATIONAL UNION FIRE INSURANCE
CO. OF PITTSBURGH, PA AND CERTAIN AFFILIATES OF AMERICAN
INTERNATIONAL GROUP, INC. FOR U.S. INSURANCE PROGRAMS**

Allied Holdings, Inc.¹ and its affiliates, as debtors and debtors-in-possession (collectively, the "Debtors" or "Allied"), respectfully submit this Motion for Authority to Enter into Insurance Renewal Agreement with National Union Fire Insurance Co. of Pittsburgh, PA and certain affiliates of American International Group, Inc. (collectively, "National Union") for U.S. Insurance Programs (the "Motion"). In support of the Motion, the Debtors show the Court as follows:

Jurisdiction

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

¹ In addition to Allied Holdings, Inc., the following entities are debtors in these related cases: Allied Automotive Group, Inc., Allied Systems, Ltd. (L.P.), Allied Systems (Canada) Company, QAT, Inc., RMX LLC, Transport Support LLC, F.J. Boutell Driveaway LLC, Allied Freight Broker LLC, GACS Incorporated, Commercial Carriers, Inc., Axis Group, Inc., Axis Netherlands, LLC, Axis Areta, LLC, Logistic Technology, LLC, Logistic Systems, LLC, CT Services, Inc., Cordin Transport LLC, Terminal Services LLC, Axis Canada Company, Ace Operations, LLC, and AH Industries Inc.

1409. The statutory predicates for the relief sought herein are Sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code").

Background

2. On July 31, 2005, each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

Relief Requested

3. In connection with the operation of their businesses, the Debtors are required to carry various insurance policies in the United States, including commercial general liability, workers' compensation, automobile liability, excess liability, commercial umbrella liability, special risks liability, directors' and officers' liability, fiduciary liability, commercial crime liability, property liability and others (all of the foregoing, collectively, the "U.S. Insurance Programs").

4. By this Motion, the Debtors respectfully seek authorization to enter into and renew certain insurance policies and agreements with National Union related to the Debtors' U.S. Insurance Programs.

Basis for Relief

5. On August 2, 2005, this Court entered the *Order Granting Motion of Debtors for Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) Authorizing Continued Maintenance of and Payment of Obligations with Respect to Debtors' Insurance Programs* (the "Insurance Order"). Under the Insurance Order, the Debtors were

authorized to maintain and continue their insurance programs. The U.S. Insurance Programs are renewable annually.

6. The Debtors considered several options in connection with their insurance renewal process. In conjunction with their review of offers from various insurers to provide the Debtors with insurance coverage for 2007, the Debtors received a Proposal for Casualty Insurance Program, dated December 28, 2006 (the "Proposal") from National Union. A copy of the Proposal is available upon request.

7. The Debtors obtained the requested insurance coverage on reduced pricing. In accordance with the Insurance Order, the Debtors have accepted the Proposal, which offers the Debtors favorable coverage and financing terms (underlying policies covered by the Proposal and all related documents and agreements are hereinafter referred to as the "Renewal Agreement").

8. The Renewal Agreement provides workers' compensation coverage with a guaranteed cost and no retained claims risk for the Debtors. The Renewal Agreement's automobile liability policy has a \$1,000,000 per occurrence deductible with no annual aggregate cap on the deductible. The Renewal Agreement also offers a commercial general liability policy with no deductible.

9. The total estimated cost of the 2007 U.S. Insurance Programs with National Union, including premiums, is approximately \$28,000,000.

10. Pursuant to the Renewal Agreement, the Debtors agree to make certain payments and reimbursements to National Union, including, but not limited to, payments

on account of (i) premiums, (ii) premium taxes, surcharges and assessments, (iii) funding of claims payment funds for losses under the policies and expenses allocated to such losses within the Debtors' insurance deductibles; (iv) other expenses within the Debtors' insurance deductible but not allocated to specific losses, (v) certain related claim service fees and (vi) certain paid losses and loss adjustment expenses.

11. As security for payment and performance of the Debtors' obligations under the Renewal Agreement, the Debtors are required to provide to National Union (i) security interests in and liens on the collateral and security provided by the Debtors to National Union; and (ii) clean, irrevocable, evergreen letters of credit issued by a bank or other financial institution for the benefit of National Union.

12. In lieu of posting collateral with their non-debtor subsidiary, Haul Insurance Limited, Allied Holdings caused collateral in the aggregate approximate amount of \$9,400,000 in letters of credit and cash to be posted with National Union.

13. National Union has conditioned maintenance of the U.S. Insurance Programs upon entry of a Bankruptcy Court order that:

- a. authorizes the Debtors to: (i) enter into the Renewal Agreement with National Union to renew the U.S. Insurance Programs; and (ii) execute all documentation necessary to enter the Renewal Agreement;
- b. in the event of default by the Debtors under the U.S. Insurance Programs, National Union may exercise all contractual rights in accordance with the terms of the U.S. Insurance Programs and applicable state law without further order of the Court, including without limitation, its rights to (i) cancel the U.S. Insurance Programs, (ii) foreclose on any collateral, in part or in full, in which it has a security interest and which may be subject to the automatic stay, (iii) receive and apply the unearned premiums to the Debtors' outstanding obligations to National Union, and (iv) the automatic stay shall be deemed lifted without further order of the Court; provided,

however, that nothing contained herein shall (i) constitute a waiver of the Debtors' and/or the Committee's right to challenge the occurrence or existence of an event of default, (ii) prohibit the Debtors and/or the Committee from contesting, disputing or challenging the occurrence or existence of an event of default, or (iii) prohibit the Debtors and/or the Committee from seeking to re-impose or continue the automatic stay;

- c. grants administrative priority pursuant to Section 503(b) of the Bankruptcy Code to National Union for reimbursement obligations and any other obligations under the U.S. Insurance Programs, subject to the Carve-Out as defined in the Final Order on Debtor-in-Possession Financing (the "Financing Order") (Doc. No. 210);
- d. authorizes National Union to carry out the terms and conditions of the U.S. Insurance Programs; provided, however, nothing in the order shall be deemed to grant relief from the automatic stay to any claimant to pursue any claim in a non-bankruptcy court;
- e. declares that the U.S. Insurance Programs may not be altered by any plan of reorganization filed in these chapter 11 cases and shall survive any plan of reorganization filed by the Debtors;
- f. declares that the terms and conditions of the U.S. Insurance Programs govern the Debtors' rights against any collateral held by National Union;
- g. declares that National Union will not be required, except as provided by the terms of the U.S. Insurance Programs, to return any part of the security it holds for the U.S. Insurance Programs without adequate protection for its interest in such security pursuant to Section 361(1) of the Bankruptcy Code; and
- h. declares that no administrative claim bar date shall apply to any claims of National Union that it may assert in these cases.

14. The Proposal also provides that the failure to obtain Bankruptcy Court approval for the execution of the Renewal Agreement by March 17, 2007 constitutes grounds for cancellation of the underlying insurance policies.

15. The continuation of the U.S. Insurance Programs with National Union is critical to the success of the Debtors' cases and is in the best interests of the Debtors' estates and their creditors. The Debtors, together with J Smith Lanier & Co. (the

“Insurance Broker”), have researched the insurance markets and available programs and have been unable to locate another insurer willing and able to provide insurance coverage on the same or better terms as those provided by National Union.

Basis for Relief

I. The Debtors Should be Authorized to Enter the Renewal Agreement.

16. Section 363(c)(1) of the Bankruptcy Code provides that a debtor-in-possession may enter into a transaction “in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1).

17. Section 363(b)(1) of the Bankruptcy Code provides that a debtor-in-possession “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. §§ 363(b)(1) and 1107(a).

18. While Section 363(b) of the Bankruptcy Code does not specify a standard to guide courts in determining when it is appropriate to authorize a debtor’s sale or disposition of assets, courts have applied Section 363 to require such disposition or sale to be in the sound business judgment of the debtor. See Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Cov. v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141 (2d Cir. 1992) (holding that, to grant a debtor’s application under § 363(b), a judge must find that the evidence presents a good business reason to grant such application).

19. The Debtors believe that renewal of the U.S. Insurance Programs with National Union is in the ordinary course of business within the meaning of Bankruptcy

Code Section 363(c) and not subject to Court approval. In an abundance of caution, however, to the extent that such renewal is not deemed to be within their ordinary course of business, the Debtors seek authority under Section 363(b) to execute the Renewal Agreement.

II. Entry into the Renewal Agreement is an Exercise of Sound Business Judgment and Should be Approved.

20. The Debtors have strong business justifications for entering the Renewal Agreement. The necessity of the U.S. Insurance Programs cannot be overemphasized, as, without the underlying insurance policies, the Debtors will be unable to operate their businesses in the United States.

21. Further, the Debtors and their Insurance Broker have considered other insurers; however, no other insurer was able to offer to the Debtors similar terms. Accordingly, the Debtors have determined in their sound business judgment that the U.S. Insurance Programs with National Union remain the most beneficial option for the Debtors and their estates. Finally, the Debtors are confident that, in entering the Renewal Agreement with National Union, the Debtors will have adequately insured their business, thereby protecting the interests of their estates and allowing the Debtors to continue successful operations. Accordingly, the Court should authorize the Debtors to renew the U.S. Insurance Programs with National Union.

22. Without the insurance coverage provided by the Renewal Agreement, the Debtors would be unable to comply with contractual, state law and other regulatory insurance requirements or satisfy the U.S. Trustee debtor in possession guidelines with

respect to maintenance of adequate insurance coverage. These things would jeopardize the Debtors' business operations and the value of their estates.

23. Bankruptcy Rule 6004(g) provides that an "order authorizing the use, sale or lease of property . . . is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(g). The Debtors request that the order on the Motion be effective immediately and that the Court rule that the ten (10) day stay pursuant to Bankruptcy Rule 6004(g) to the extent applicable, does not apply.

Notice

24. Notice of this Motion has been provided to those entities on the Master Service List (as such term is defined in the Order Establishing Notice Procedures entered on August 2, 2005 in these jointly administered cases) and upon National Union by U.S. mail. In light of the nature of relief requested, the Debtors submit that no further notice is necessary.

Conclusion

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and granting the Debtors such other and further relief as may be just.

This 23rd day of January 2007.

/s/ Harris B. Winsberg
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