

1 ISRAEL GOLDOWITZ
Chief Counsel
2 ANDREA WONG
Deputy Chief Counsel
3 KARTAR S. KHALSA
Assistant Chief Counsel
4 STUART E. BERNSEN (DC 375542)
MELISSA T. NGO (VA 87854)
5 Attorneys
PENSION BENEFIT GUARANTY CORPORATION
6 Office of the Chief Counsel
1200 K Street, N.W.
7 Washington, D.C. 20005-4026
Tel.: (202) 326-4020, ext. 3019
8 Fax: (202) 326-4112
Emails: ngo.melissa@pbgc.gov and
9 efile@pbgc.gov

10 LOCAL COUNSEL
EILEEN M. DECKER
11 United States Attorney
DOROTHY A. SCHOUTEN
12 Assistant United States Attorney
Chief, Civil Division
13 ROBYN MARIE LEON MONTELEONE
Assistant United States Attorney
14 Chief, General Civil Section
ELAN S. LEVEY (State Bar No. 174843)
15 Assistant United States Attorney
Room 7516, Federal Building
16 300 North Los Angeles Street
Los Angeles, California 90012-9834
17 Tel.: (213) 894-3997
Fax: (213) 894-7819
18 Email: elan.levey@usdoj.gov

19 *Attorneys for Pension Benefit Guaranty Corporation*

20
21 **UNITED STATES BANKRUPTCY COURT**
FOR THE CENTRAL DISTRICT OF CALIFORNIA
22 **LOS ANGELES DIVISION**

23 In re:	Lead Case No.
24 ASSOCIATED THIRD PARTY 25 ADMINISTRATORS,	2:16-bk-23679-SK
26 Debtor and Debtor in Possession.	Chapter 11

1 In re:

2 ALLIED FUND ADMINISTRATORS,
3 LLC

4 Debtor and Debtor in Possession.

5 Affects Both Debtors

6 Affects Associated Third Party
Administrators Only

7 Affects Allied Fund Administrators,
8 LLC Only

Jointly administered with:

Case No. 2:16-bk-23682-SK

**RESERVATION OF RIGHTS OF
SECURED CREDITOR PENSION
BENEFIT GUARANTY
CORPORATION TO MOTION FOR
ENTRY OF AN ORDER
AUTHORIZING THE USE OF CASH
COLLATERAL OF DEBTOR**

HEARING:

Date: November 16, 2016

Time: 9:00 a.m.

Place: Courtroom 1575

225 E. Temple St.

Los Angeles, CA 90012

11
12 The Pension Benefit Guaranty Corporation (“PBGC”), a secured creditor in the above-
13 captioned bankruptcy proceeding, responds to the Debtors’ Motion for Entry of an Order
14 Authorizing the Use of Cash Collateral of Debtors (the “Motion”) (Docket 11). PBGC objects to the
15 Debtors’ Motion to the extent that it claims it has unencumbered cash.

16 **RESPONSE**

17
18 1. Associated Third Party Administrators (“ATPA”), the debtor in the above-captioned
19 bankruptcy, filed for protection under Chapter 11 of the United States Bankruptcy Code on Monday,
20 October 17, 2016. ATPA’s wholly owned subsidiary, Allied Fund Administrators, LLC (“AFA,”
21 and collectively with ATPA, the “Debtors”), also filed for protection under Chapter 11 on the same
22 date. PBGC learned of the filings on Tuesday, October 18, 2016.

23
24 2. ATPA maintains the ATPA Defined Benefit Plan.¹ ATPA failed to make minimum
25 funding contributions required by law, 26 U.S.C. § 430, to the Pension Plan starting no later than
26 2011 and has made no contributions to the Pension Plan for a number of years.

27 ¹The Motion mistakenly describes the pension plan as a “defined contribution” plan rather than as a
28 “defined benefit” plan.

1 3. Under 26 U.S.C. § 430(k), a lien arises on all real and personal property once “any
2 person fails to make a contribution payment required by section 412 and this section before the due
3 date for such payment, and the unpaid balance of such payment (including interest), when added to
4 the aggregate unpaid balance of all preceding such payments for which payment was not made
5 . . . exceeds \$1,000,000.” 26 U.S.C. § 430(k)(1).

6
7 4. PBGC has filed multiple valid liens pursuant to 26 U.S.C § 430(k) against the
8 Debtors and their affiliates in California, New York, and Florida for missed minimum funding
9 contributions. Those liens cover all personal property, including cash. Omnibus Declaration of
10 Henry D. Ritter at 7 ¶ 18, Exhibit A at 72-83 (Docket 14).

11 5. The Debtors’ Motion acknowledges that PBGC is a secured creditor for an amount in
12 the \$10 million range. Motion at 8.

13
14 6. On October 20, 2016, PBGC filed a limited objection and reservation of rights in
15 connection with the approval of the Debtors’ Motion on an interim basis (Docket 41).

16 7. The Court held a hearing on the Motion on October 20, 2016, and on October 21,
17 2016, the Court entered an order granting the Debtors’ Motion on an interim basis (Docket 48).

18 8. PBGC requests adequate protection of its interest in the Debtors’ property – including
19 cash – pursuant to 11 U.S.C. § 363(e). The Debtors contend that PBGC’s liens do not apply to cash.
20 It is the PBGC’s position that neither Bankruptcy Code Section 544(a), nor any provision of
21 California law, in any way restrict the collateral subject to PBGC’s statutory liens.² Nor do PBGC’s
22 statutory liens meet any of the conditions for avoidance specified in Bankruptcy Code Section 545.

23 Pursuant to the Federal Rules of Bankruptcy Procedure, the Debtors must bring an adversary
24

25
26 ² See *Stierwalt v. Associated Third Party Adm’rs, et al.*, Case No. 16-mc-80059-EMC, *slip op.* at 2
27 (D. Cal. Aug. 22, 2016) (USDC Dkt. No. 41) (finding that in all likelihood secured party CAM “had
28 a security interest in the money in the bank account” of ATPA “because (1) the money appeared to
be proceeds from contract rights that ATPA had with its customers and (2) CAM had perfected its
interest in the contracted rights”).

1 proceeding “to determine the validity, priority, or extent of a lien.” Fed. R. Bankr. P. 7001(2); *see*
2 *also* 11 U.S.C. § 545. PBGC reserves all rights regarding any challenges to the validity, priority or
3 scope of its liens. PBGC does not concede that any other secured creditors have priority over
4 PBGC’s security interest.

5
6 9. PBGC reserves all rights to supplement or amend its arguments regarding the validity
7 and priority of its liens or the adequacy of protection under the Bankruptcy Code.

8
9 Dated: November 2, 2016

Respectfully submitted,

10 /s/ Melissa T. Ngo
11 ISRAEL GOLDOWITZ
12 Chief Counsel
13 ANDREA WONG
14 Deputy Chief Counsel
15 KARTAR S. KHALSA
16 Assistant Chief Counsel
17 STUART E. BERNSEN (DC 375542)
18 MELISSA T. NGO (VA 87854)
19 Attorneys
20 PENSION BENEFIT GUARANTY
21 CORPORATION
22 Office of the Chief Counsel
23 1200 K Street, N.W.
24 Washington, D.C. 20005-4026
25 Tel.: (202) 326-4020, ext. 3019
26 Fax: (202) 326-4112
27 Emails: ngo.melissa@pbgc.gov *and*
28 efile@pbgc.gov

LOCAL COUNSEL
EILEEN M. DECKER
United States Attorney
DOROTHY A. SCHOUTEN
Assistant United States Attorney
Chief, Civil Division

By: /s/ Elan S. Levey
ELAN S. LEVEY
Assistant United States Attorney

United States Attorney's Office
Central District of California
300 N. Los Angeles Street
Fed. Bldg., Rm. 7516
Los Angeles, CA 90012

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Tel.: (213) 894-3997
Fax: (213) 894-7819
Email: elan.levy@usdoj.gov

Attorneys for Pension Benefit Guaranty Corporation

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, D.C. 20005-4026

A true and correct copy of the foregoing document entitled (*specify*): Reservation of Rights of Secured Creditor Pension Benefit Guaranty Corporation to Motion for Entry of an Order Authorizing the Use of Cash Collateral of Debtor

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 11/02/2016, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Todd M. Arnold** tma@lnbyb.com
- **Ron Bender** rb@lnbyb.com
- **Shawn M. Christianson** cmcintire@buchalter.com, schristianson@buchalter.com
- **Jonathan R. Doolittle** jdoolittle@reedsmith.com, rpelusi@reedsmith.com; bankruptcy-2628@ecf.pacerpro.com; ashively@reedsmith.com; dkelly@reedsmith.com
- **Jamie P. Dreher** jdreher@downeybrand.com, mfrazier@downeybrand.com; courtfilings@downeybrand.com
- **Richard W. Esterkin** resterkin@morganlewis.com, gloria.moonasinghe@morganlewis.com
- **Edward M. Fox** emfox@seyfarth.com
- **Michael I. Gottfried** mgottfried@lgbfirm.com, kalandy@lgbfirm.com; cboyias@lgbfirm.com; srichmond@lgbfirm.com; sdeiches@lgbfirm.com; mmocciaro@lgbfirm.com
- **Jacqueline L. James** jjj@lnbyb.com
- **Gary M. Kaplan** gkaplan@fbm.com
- **Eve H. Karasik** ehk@lnbyb.com
- **Jeffrey S. Kwong** jsk@lnbyb.com, jsk@ecf.inforuptcy.com
- **Dare Law** dare.law@usdoj.gov, ron.maroko@usdoj.gov
- **Elan S. Levey** elan.levey@usdoj.gov, louis.lin@usdoj.gov
- **Tracy L. Mainguy** bankruptcycourtnotices@unioncounsel.net, tmainguy@unioncounsel.net
- **Robert B. Miller**
- **Emily P. Rich** erich@unioncounsel.net, bankruptcycourtnotices@unioncounsel.net
- **Lindsey L. Smith** lls@lnbyb.com, lls@ecf.inforuptcy.com
- **Michele R. Stafford** mstafford@sjlawcorp.com, collections@sjlawcorp.com
- **United States Trustee (LA)** ustpregion16.la.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 11/02/2016, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA FEDEX

Russell J. Reid

Reid, McCarthy, Ballew & Leahy, L.L.P.
100 West Harrison Street
North Tower, Suite 300
Seattle, WA 98119

Honorable Sandra Klein

United States Bankruptcy Court
255 E. Temple Street
Bin outside of Suite 1582
Los Angeles, CA 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 2, 2016 MELISSA T. NGO
Date *Printed Name*

/s/ Melissa T. Ngo
Signature