

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
Alternative Distribution Systems, Inc., <i>et al.</i> <sup>1</sup>	)	Case No. 09-13099 (PJW)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Related to Docket No. 19

**ATTORNEY’S SUPPLEMENTAL DECLARATION IN SUPPORT  
OF APPLICATION OF THE DEBTORS FOR AN ORDER AUTHORIZING  
THE EMPLOYMENT AND RETENTION OF PROSKAUER ROSE LLP  
NUNC PRO TUNC TO THE PETITION DATE**

I, Jeff J. Marwil, being duly sworn according to law, depose and state that:

1. I am a partner of the firm of Proskauer Rose LLP (“Proskauer”), which maintains an office for the practice of law at Three First National Plaza, 70 West Madison, Suite 3800, Chicago, Illinois 60602. I am an attorney duly licensed in and am a member in good standing of the bar for the State of Illinois and am admitted to practice before the United States District Court for the Northern District of Illinois. I submit this Supplemental Declaration in support of the entry of an order authorizing the retention of Proskauer as lead counsel for the above-captioned debtors and debtors in possession (collectively, the “Debtors”) in these chapter 11 cases, pursuant to section 327(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), to comply with sections 328, 329 and 504 of the Bankruptcy Code, Rules 2014(a), 2016(b), 5002 and 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) the Local Bankruptcy Rules of the United States Bankruptcy Court for

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Alternative Distribution Systems, Inc. (2412); May Logistics Services, Inc. (4970); and ADS Logistics, LLC (0782).

the District of Delaware (the “Local Rules”), and to address the concerns raised informally by the United States Trustee with respect to Proskauer’s disinterestedness.

2. As disclosed in my original declaration attached as Exhibit B to the *Application of the Debtors for an Order Authorizing the Employment and Retention of Proskauer Rose LLP, Nunc Pro Tunc to the Petition Date* [Docket No. 19] (the “Proskauer Retention Application”),<sup>2</sup> prior to Proskauer’s representation of the Debtors, Proskauer represented one of the First Lien Lenders, Regiment Capital Special Situations Fund III, L.P. (“Regiment”), in connection with a restructuring of the Debtors’ First Lien Debt, which restructuring was completed on or about April 30, 2009 (the “Regiment/ADS Matter”). Proskauer attorneys spent a total of 16.1 hours representing Regiment with respect to the Regiment/ADS Matter and incurred fees in the amount of \$12,500. Proskauer’s involvement in the Regiment/ADS Matter was primarily limited to rendering general advice and document review, performed solely on behalf of Regiment as one of three First Lien Lenders. Proskauer did not advise or represent either of the other two First Lien Lenders who collectively hold approximately 60% of the First Lien Debt.

3. In June, 2009, Proskauer billed Regiment for its services, Regiment accordingly paid Proskauer, and Proskauer closed the Regiment/ADS Matter, thereby discontinuing its representation of Regiment with respect to any matters relating to the Debtors. Proskauer continues to represent Regiment with respect to several matters unrelated to the Debtors and their chapter 11 cases.

4. Prior to accepting the Debtors as a client, Proskauer both (i) disclosed its prior representation of Regiment to the Debtors, and (ii) obtained appropriate conflict of interest waivers from each of Regiment and the Debtors. On May 1, 2009, upon receipt of the Debtors’

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Proskauer Retention Application, and the exhibits thereto, as applicable.

signed engagement letter and waiver with respect to the Regiment/ADS Matter, Proskauer commenced its representation of the Debtors.

5. Accordingly, although there was a brief period prior to the June, 2009 closing of the Regiment/ADS Matter during which Proskauer represented both Regiment with respect to the Regiment/ADS Matter and the Debtors, Proskauer disclosed this concurrent representation, and obtained appropriate waivers from both clients. Additionally, Proskauer's involvement in the Regiment/ADS Matter on behalf of Regiment was substantially complete when the transaction closed on April 30, 2009, which was prior to the commencement of any work on behalf of the Debtors.

6. Throughout its representation of the Debtors, Proskauer has taken measures to ensure that no attorneys or other Proskauer professionals who represented Regiment with respect to the Regiment/ADS Matter perform any work on behalf of, or otherwise represent, the Debtors. During the brief period during which Proskauer represented the Debtors prior to the official termination of Proskauer's representation of Regiment in the Regiment/ADS Matter, but after the provision of substantially all services related thereto, no attorneys or other Proskauer professionals who represented the Debtors performed any work on behalf of, or otherwise represented Regiment with respect to the Regiment/ADS Matter. In addition, Proskauer has implemented a screen in order to ensure that Proskauer attorneys and other professionals who represent the Debtors, and Proskauer attorneys and other professionals who represented Regiment in the Regiment/ADS Matter, do not communicate with each other or otherwise share information regarding their respective representations.

7. Proskauer has never represented Regiment in connection with the Debtors' chapter 11 cases. In fact, during the brief period of concurrent representation described above,

the Debtors were pursuing an out of court resolution to their' financial woes and Proskauer's efforts on behalf of the Debtors were focused on achieving such a result. Proskauer and the Debtors did not initiate preparations for these chapter 11 cases until July, 2009; well after Proskauer had closed the Regiment/ADS Matter.

8. Accordingly, in light of the foregoing, Proskauer believes that it is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, because (i) Proskauer is not a creditor, equity security holder, or insider of the Debtors; (ii) Proskauer is not and was not, within 2 years before the Petition Date, a director, officer, or employee of any of the Debtors; and (iii) Proskauer does not have any interest materially adverse to the interest of the Debtors' estates or of any class of creditors or equity security holders.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 15, 2009

By: /s/ Jeff J. Marwil  
Name: Jeff J. Marwil