

UNITED STATES BANKRUPTCY  
COURT SOUTHERN DISTRICT OF  
FLORIDA

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In re:

RUDEN MCCLOSKEY, P.A.

CHAPTER 11

Debtor

CASE NUMBER: 11-40603-RBR

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**EMERGENCY MOTION OF CREDITOR, AFCO CREDIT CORPORATION,  
FOR RELIEF FROM THE AUTOMATIC STAY  
AND  
FOR ADEQUATE PROTECTION  
AND REQUEST FOR EXPEDITED HEARING ON DEC. 16, 2011**

The Creditor, AFCO CREDIT CORPORATION, (hereinafter referred to as “AFCO”), by and through its undersigned counsel, and in compliance with Local Bankruptcy Rules 9001 et seq., hereby files this Emergency Motion for Relief from the Automatic Stay and for Adequate Protection, and respectfully requests an Expedited Hearing, and in support thereof, states as follows:

**1. STATEMENT OF FACTS UPON WHICH THE REQUEST FOR RELIEF IS  
BASED (and CERTIFICATE OF NECESSITY for EMERGENCY HEARING):**

**BACKGROUND.** The subject collateral, unearned insurance premiums diminish in value at a specific rate each day. AFCO is an insurance premium financing company whose business consists of lending money to companies to finance their business insurance premiums. The collateral for the loan is the unearned insurance premiums of the policy that was financed. Upon cancellation of that policy, AFCO is to receive the unearned premiums, if any, in full or partial repayment of the loan. The Creditor, AFCO, needs and respectfully requests an expedited hearing because the subject collateral, unearned insurance premiums diminish in value at a specific rate each day.



**The undersigned understands that other matters will be argued before the Court on December 16, 2011 at 9:30 a.m. and respectfully requests that the Court allows us to argue this motion at that time.**

2. The Exhibits that are attached hereto in support of this Motion are:

Exhibit "A" : Premium Finance Agreement (8/17/11)

Exhibit "B" : Invoice Collection Records (8/17/11)

Exhibit "C" : Premium Finance Agreement (10/3/11)

Exhibit "D" : Invoice Collection Records (10/3/11)

3. **UNPAID BALANCE.** There are two Premium Finance Agreements, copies of which are attached hereto as Exhibits "A" and "C", respectively. The unpaid balance due under the subject Premium Finance Agreement dated **August 17, 2011** was **\$459,852.66**, as of **November 3, 2011**. A copy of the Invoice Collection Record for this agreement is attached hereto as **Exhibit "B."** The value of the collateral, that is, the unearned premium, under the Premium Finance Agreement was **\$551,194.50** as of **November 3, 2011**. The collateral on the Premium Finance Agreement diminishes each and every day at a rate of **\$1,986.08**. Accordingly, affirmative harm is occurring daily. The collateral will continue to diminish at the rate of **\$1,986.08** per day.

The unpaid balance due under the subject Premium Finance Agreement dated **October 3, 2011** was **\$138,361.44**, as of **November 3, 2011**. A copy of the Invoice Collection Record for this agreement is attached hereto as **Exhibit "D."** The value of the collateral, that is, the unearned premium, under the Premium Finance Agreement was **\$120,673.66** as of **November 3, 2011**. The collateral on the Premium Finance Agreement diminishes each and every day at a rate of **\$355.66**. Accordingly, affirmative harm is occurring daily. The collateral is now less than the amount owed and will continue to diminish at the rate of **\$355.66** per day.

4. **STATEMENT OF CAUSE UNDER 11 U.S.C. § 362(d)(1):** The Creditor has a lack of adequate protection of its interest in property, i.e., in the unearned premiums. The amount owed, referenced above, is more than the collateral as of the date of this Motion.

5. **STATEMENT OF THE AMOUNT OF THE DEBT:** \$459,852.66 as of November 3, 2011 for the Premium Finance Agreement dated August 17, 2011 and \$138,361.44 as of November 3, 2011 for the Premium Finance Agreement dated October 3, 2011.

6. **ESTIMATED VALUE OF THE COLLATERAL:** The Petition was filed on November 1, 2011. As of November 1, 2011, the value of the collateral for the Premium Finance Agreement dated August 17, 2011 was \$551,194.50. That collateral diminishes each and every day at a rate of \$1,986.08.

As of November 1, 2011, the value of the collateral for the Premium Finance Agreement dated October 3, 2011 was \$120,673.66. That collateral diminishes each and every day at a rate of \$355.66.

7. **IRREPARABLE HARM:** Irreparable harm will occur if this Motion is not granted or if expedited consideration is not given to this Motion. The collateral diminishes on a daily basis. The collateral is the unearned insurance premiums. Every day that AFCO is not allowed to cancel the policies and receive unearned premiums, the policies are in effect and the unearned premiums diminish. This is irreparable. Unearned premiums diminish pursuant to the subject insurance policies. AFCO cannot reverse or turn back the cancellation date of the policies; AFCO provides the financing for the insurance premiums, it does not provide the insurance and does not act as an insurer. AFCO can exercise no control over the policies, except to cancel them pursuant to the power of attorney given to it by the insured in the Premium Finance Agreement.

8. **LIKELIHOOD OF SUCCESS ON THE MERITS:** AFCO has a lack of

adequate protection of its collateral and of its interest. Even as of the date of this Motion, the value of the collateral is less than the amount owed, not including costs or attorney's fees that are owed under the Premium Finance Agreement.

9. AFCO is an insurance premium financing company whose business consists of lending money to companies to finance their business insurance premiums.

10. **RELIEF FROM THE STAY AND ADEQUATE PROTECTION:** The Finance Agreements provide that in the event of the Debtor's default, AFCO is entitled, *inter alia*, to cancel the policies which were financed and collect any unearned premiums or other amounts payable under the policies.

11. Under the Finance Agreement, the Debtor "assigns to AFCO security for the total amount payable in this Agreement, any and all unearned premiums and dividends which may become payable under the insurance policies and loss payments which reduce the unearned premiums, subject to any Mortgagee or loss payee interest. The [Debtor] gives to AFCO a security interest in all items mentioned in this paragraph." (**Exhibit "A", page 3, paragraph 3; Exhibit "C", page 2, paragraph 3**).

12. The Debtor is in Default under the Agreement. Evidence of the Default is the amount owed and the amounts of the collateral are provided by the Invoice Collection Records that are attached hereto as **Exhibits "B" and "D"**.

13. §362 (d) (1) of the Code provides that on a request of a party in interest and after notice and the hearing, the Court shall grant relief from the stay "for cause, including the lack of adequate protection of an interest in property of such party in interest...." §361 of the Code provides that adequate protection may be provided by "requiring the Trustee to make a cash payment or periodic cash payments" to the Holder of an interest in property to the extent that the stay under §362 or the use of property under §363 of the Code results in a decrease in the value of

such entities interest in such property.

14. Unless payments are made to protect its security interest, AFCO lacks adequate protection of its interest and cause to modify the automatic stay and to permit AFCO to exercise its rights under the Finance Agreement.

### **MEMORANDUM OF LAW**

#### **A. PERFECTION OF THE SECURITY INTEREST.**

AFCO is an insurance premium financing company whose business consists of lending money to companies to finance their business insurance premiums. The collateral for the loan is the unearned insurance premiums of the policy that was financed. Upon cancellation of that policy, AFCO is to receive the unearned premiums, if any, in full or partial repayment of the loan. The Fifth Circuit Court of Appeals has described insurance premium financing as follows:

Premium Financing involves an advance by the finance company to the insurance company or its agent of the premium due for the full term of the policy. This advance has been repaid by the insured to the finance company and amortized monthly installments which includes an additional amount to cover financing charges. The financing company is secured in making this advance by obtaining the right to cancel the policy and to receive the return premium due upon cancellation if timely repayments are not made. Baker & Co. vs. Preferred Risk Mutual Insurance Company, 569 F.2<sup>nd</sup> 1347, 1348 (5<sup>th</sup> Cir. 1978) as cited in In re: Redfeather Fast Freight, Inc., 1 Bankr. 446; 22 Collier Bankr. Cases (MB) 150 (D. Neb. 1979).

Premium Financing has been held valid and enforced by Courts which have considered the various issues under it. The Florida Insurance Code, for example, provides for regulation on insurance financing under Florida Statutes §627.848. See, Prida v. Transamerica Insurance Finance Corp., 651 So.2d 763 (Fla. 3d DCA 1995) and Florida East Coast Properties, Inc. vs. Tifco, Inc., 556 So. 2d 750 (Fla. 3d DCA 1989).

The Premium Finance Company, in this case AFCO, has a security interest in the unearned premiums of the insurance policy. The Premium Finance Company is not required to file anything

to perfect that interest. See, e.g., In re: RBS Industries, Inc., 67 B.R. 946 (D. Conn. 1986), In re: U.S. Repeating Arms Company, 67 B.R. 990 (Dist. Conn. 1986); Premium Finance Specialists vs. Lindsey, 11 BR 135 (E.D. Ark. 1981); and In re: Remcor, Inc., 186 BR 629 (W. D.. Pennsylvania. 1995).

It is clear from every Court which has examined this issue, that Article 9 of the U.C.C. (secured transactions) does not apply to perfection of the interest of a premium finance corporation in the unearned premiums. See, e.g., In re: Remcor, Inc., 186 BR 629 (W.D. Pennsylvania 1995). In In re: Remcor, the Bankruptcy Court held that the security interest in the unearned premiums was perfected even though the premium finance agreement may have violated Pennsylvania's insurance premium finance statutes.

The lien held by the insurance premium finance company is superior to all other liens. This is so because the collateral, that is the unearned premiums, is not property of the Estate. In re: Remcor, Inc., 186 BR 629 (W.D. Pennsylvania 1995). In In re: Remcor, the Western District of Pennsylvania held that the premium finance company held a perfected security interest in the unpaid insurance premiums which was above and superior to another creditors "perfected super priority post petition lien of all of debtors assets". One of the reasons for that is that the unearned insurance premiums were not property of the Estate. The rights to the unearned premiums were granted and conveyed to the insurance premium finance corporation before petition for bankruptcy. In In re: Remcor, the Court said: "The reason why [the other creditors] post petition super priority lien did not attach to the unearned insurance premiums, is that they were not "property of the Estate". " In re: Remcor, Inc. 186 BR at 636.

This lien is created by the Irrevocable Power of Attorney given by the insured at the time that the insured executes the Premium Finance Agreement. In this case, the subject Premium Finance Agreement provides for a security interest as follows:

3. SECURITY INTEREST: The insured assigns to AFCO as security for the total amount payable in this Agreement. Any and all unearned premiums and dividends which may become payable under the insurance policies and loss payments which reduce the unearned premiums, subject to any mortgagee or loss payee interest. The insured gives to AFCO a security interest in all items mentioned in this paragraph.

The Agreement, in paragraph 10, also provides for a Power of Attorney as follows:

10. POWER OF ATTORNEY: The insured appoints AFCO its attorney in fact with full authority to cancel the insurance policies financed herein for non payment of premium.

The Power of Attorney in the Premium Finance Agreement is enforceable in Bankruptcy.

In re: Universal Motor Express, Inc. 72 BR 208 (W.D. N.C. 1987); U.S. Repeating Arms Co., 67 BR 990 (Dist. Conn. 1986) and In re: Maplewood Poultry Co., 2 Bankr. 550, 28 UCC Rep. Serv. (Callaghan) 186 (Dist. Maine 1980). In all of the above cited cases, an Irrevocable Power of Attorney given by a debtor to insurance premium finance companies are authorizing the company to cancel the policy and apply unearned insurance premiums against any default are enforceable against the debtor after the debtor files for Chapter 11 relief, where the Power of Attorney was coupled with an interest in unearned premiums. In all of those cases, and in this case, the Power of Attorney is coupled with the interest in the unearned premiums, the collateral for the loan.

**B. AFCO IS ENTITLED TO STAY RELIEF.**

AFCO in this case is entitled to Stay Relief. The Premium Finance Company is entitled to relief from stay absent any concrete evidence from the debtor that AFCO will have adequate protection of its debt. For example, it is not sufficient that the debtor allege that the insurance policies underlying the Premium Finance Agreement are necessary for effective reorganization of the debtor. It is also not sufficient that the debtor present evidence that it has attempted to have the insurers agent rework the applicable insurance coverage to reflect reduced requirement and to establish an effective post petition premium so that the debtor can begin making weekly payments thereon. The debtor has the burden to prove adequate protection and is required to do so with

concrete evidence. In re: Universal Motor Express, Inc., 72 BR 208 (W.D. N.C. 1987).

If the Court were inclined to grant adequate protection as opposed to stay relief, adequate protection can be more than the accrued amounts by which collateral has diminished in value. In re: U.S. Repeating Arms, 67 Bankr. BR 990 (Dist. Conn. 1986) the Court said:

However, this method does not foreclose other means by which a debtor may provide adequate protection, See 11 USC § 361 (2) and (3); and it is the duty of [the debtor] not this Court, to propose sufficient protection to satisfy Code §361. See, In re: Auto Train Corporation 9 BR 166.

In re: U.S. Repeating Arms Company 67 BR 1000. If the Court were to order a debtor to make payment of the diminishment of value of the collateral, the date from which the diminishment should be measured is the filing of the initial petition for bankruptcy protection. In In re: Auto Train Corporation, 9 BR 159 (Dist. of Colombia 1981) the Court said:

While the concept of value is certainly a fluid one in bankruptcy and will be applied by the Court according to the unique circumstances of the case, the value is ultimately linked to the creditor's interest in and right to certain collateral. It, likewise, is not to be limited or restricted to a given point in time vis-à-vis the case or proceeding. N 19. However, **11 USC § 361 is clearly designed to protect the secured creditor by assuring him that he will receive in value "essentially what he bargained for"**. (Citing: H.R.Rap No. 595, 95<sup>th</sup> Cong., 2 d Sess. 339 (1978)). Accordingly, if the creditor has a valid security interest, enforceable against the Trustee, that security interest exists throughout the case and is not "pegged" to a particular juncture in the proceeding-although the value of the collateral itself may vary depending upon the juncture of the proceeding. The proper application of adequate protection has been appropriately summarized in these words: "the most import message of the code with respect to the treatment of entities with an interest in property of the Estate is that the remedies may be suspended, even abrogated. Their right of recourse to the collateral may be terminated as it is consumed in the business, **but the value of their secured position as it existed at the commencement of the case is to be protected throughout the case when adequate protection is required....**" [emphasis added] citation to Collier on Bankruptcy, § 361.01 at 361-6 (15<sup>th</sup> Ed. 1980). (Emphasis added)



There is a long line of cases holding that for purposes of adequate protection, secured creditors are entitled to have the value of their interest calculated from the date the petition for relief is filed rather than the date on which the motion for adequate protection or relief from stay is filed. See, *In re Ritz-Carlton of D.C., Inc.*, 98 BR 170 (S.D. N.Y. 1989); *In re Craddock-Terry Shoe Corporation*, 98 BR 250 (W.D. Va. 1988); *In re U.S. Repeating Arms Co.*, 67 BR 990 (Dist. Conn. 1986); *In re Dahlquist*, 34 BR 476 (Dist. S. D. 1983). Likewise, the United States Supreme Court held in *United Savings Assoc. of Texas V. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), that a secured creditor has the right to receive protection for any decline in the value of the collateral during the automatic stay. AFCO should be protected from the decrease in value of its security interest resulting from the stay in its entirety; that is, from the commencement of the case.

**C. CONCLUSION.**

AFCO's collateral diminishes at a fixed rate every day. AFCO holds a perfected security interest in that collateral and should be afforded stay relief to be allowed to obtain the unearned premiums from the insurer.

Dated: December 12, 2011

s/ John H. Hickey  
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*Attorneys for the AFCO Credit Corporation*

**CERTIFICATE OF COUNSEL**

The undersigned has conferred with counsel for the Debtor, who does not object to the relief requested regarding the casualty policy referenced in Exhibit "C." Counsel for Debtor is undecided as what position to take regarding the other policies referenced in Exhibit "A" at the time of filing of this motion.

s/John H. Hickey  
John H. Hickey, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that on December 12, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/John H. Hickey  
John H. Hickey, Esq.

**SERVICE LIST**

**Case No. 11-40603-RBR**

**United States Bankruptcy Court, Southern District of Florida**

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801 Brickel Avenue  
Miami, FL 33131  
Tel. (305) 755-4931  
Fax (305) 438-7438  
*Creditor Committee*

# **EXHIBIT A**

17-10-113 092-7 CF



**Premium Finance Agreement**

(CHECK APPROPRIATE BOX)

14 Wall Street, Suite 8A-19, New York, NY 10005  
 TEL. NOS. 212-401-4400 800-288-0787

PERSONAL  
 COMMERCIAL

A	TOTAL PREMIUMS	AGENT (NAME & PLACE OF BUSINESS)		PRODUCER CODE NO.	INSURED (NAME & RESIDENCE OR BUSINESS ADDRESS)		
	\$ 846,896.00	Aon Risk Services Northeast, Inc. 199 Water Street 35th Floor New York, NY ZIP CODE 10038		10361381	Ruden McClosky P.A. 200 East Broward Boulevard Suite 1500 Fort Lauderdale, FL ZIP CODE 33301		
B	DOWN PAYMENT						
\$	169,379.00						
C	AMOUNT FINANCED (A Minus B)	PAYMENT SCHEDULE					
		NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS		WHEN PAYMENTS ARE DUE		
		9 (Monthly)	\$76,642.11		FIRST INSTALLMENT DUE	INSTALLMENT DUE DATES	
\$	677,517.00			09/01/2011	1st		
D	FINANCE CHARGE	SCHEDULE OF POLICIES					
		POLICY PREFIX AND NUMBER	EFFECTIVE DATE OF POLICY/ ANNUAL INSTALLMENT	NAME OF INSURANCE COMPANY AND NAME AND ADDRESS OF GENERAL OR POLICY ISSUING AGENT	TYPE OF COVER	MONTHS COVERED BY PREMIUM	PREMIUM \$
E	DOCUMENTARY STAMP TAX	CLX-10017 06	08/01/2011	Interstate Fire & Casualty Company	PL	12	450,000.00
				Tax	TAX	NRef	28,800.00
F	TOTAL OF PAYMENTS (C + D + E)	PLX-10002 50 P-1	08/01/2011	Nautilus Insurance Company	XSPL	12	220,000.00
				Tax	TAX	Ref	14,080.00
G	ANNUAL PERCENTAGE RATE	Policy Detail Continued..					
	3.490 %						
TOTAL PREMIUMS must agree with Block "A" Above --> TOTAL \$							846,896.00

**SECURITY AGREEMENT**

1. DEFINITIONS: The above named insured ("the insured") is the debtor. AFCO Credit Corporation ("AFCO"), is the lender to whom the debt is owed. Singular words shall mean plural and vice versa as may be required in order to give the Agreement meaning. "Insurance company or company", "insurance policy or policy" and "premium" refer to those items listed under "Schedule of Policies".

NOTICE: 1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACE. 2. YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS AGREEMENT. 3. UNDER THE LAW, YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS TO OBTAIN A PARTIAL REFUND OF THE SERVICE CHARGE.

THE INSURED AGREES TO THE PROVISIONS ABOVE AND ON THE LAST PAGE OF THIS AGREEMENT

Date August 1, 2011

X Ruden McClosky P.A.  
 BY: Bruce D. Goodman  
 SIGNATURE OF INSURED(S) OR DULY AUTHORIZED AGENT OF INSURED(S) *Bruce D. Goodman*

**PRODUCER'S REPRESENTATIONS**

The undersigned warrants and agrees:

(1) the insured has received a copy of this Agreement, and the Required Federal Truth-in-Lending Disclosures for Personal Lines Insurance, if applicable, (2) the policies are in full force and effect and the information in the schedule of policies and the premiums are correct, (3) the insured has authorized this transaction and recognizes the security interest assigned herein, (4) to hold in trust for AFCO any payments made or credited to the insured through or to the undersigned, directly, indirectly, actually or constructively by any of the insurance companies and to pay the monies to AFCO upon demand to satisfy the then outstanding indebtedness of the insured and that any lien the undersigned now has or hereafter may acquire on any return premium arising out of the above listed insurance policies is subordinated to AFCO's lien or security interest therein, (5) there are no exceptions to the policies financed other than those indicated and the policies comply with AFCO's eligibility requirements, (6) no Audit or Reporting Form Policies, policies subject to Retrospective Rating or to minimum earned premiums are included except as indicated and that the Deposit or Provisional Premiums are not less than anticipated premiums to be earned for the full term of the policies, if policy is subject to minimum earned premium, it is \$ 167,500.00. Indicate Policy & Prefix Number of Exceptions

(7) the policies can be cancelled by the insured or the company on 10 days notice and the unearned premiums will be computed on the standard short rate or pro rata table except as indicated, (8) the undersigned represents that a proceeding in bankruptcy, receivership or insolvency has not been instituted by or against the named insured or if the named insured is the subject of such a proceeding it is noted on the Premium Finance Agreement in the space in which the insured's name and address is placed.

Date August 17, 2011

X *Marisa A. Lehman*  
 SIGNATURE OF AGENT OR BROKER

Page 3 of 3  
 on behalf of Aon Risk Services Northeast, Inc.



**Premium Finance Agreement**

14 Wall Street, Suite 8A-19, New York, NY 10005  
 TEL. NOS. 212-401-4400 800-288-0787

(CHECK APPROPRIATE BOX)

PERSONAL  
 COMMERCIAL


**SCHEDULE OF POLICIES**

POLICY PREFIX AND NUMBER	EFFECTIVE DATE OF POLICY/ ANNUAL INSTALLMENT	NAME OF INSURANCE COMPANY AND NAME AND ADDRESS OF GENERAL OR POLICY ISSUING AGENT	TYPE OF COVER	MONTHS COVERED BY PREMIUM	PREMIUM \$
ELU122214-1 J	08/01/2011	XL Specialty Insurance Company	EPL	12	132,000.00
		Tax	TAX	Ref	1,716.00
		Agent Policy Fee	FEE	NRef	300.00
<p><i>THE TERMS OF THIS AGREEMENT ARE CONTAINED ON ATTACHMENT ANNEXED HERETO AND MADE A PART HEREOF.</i></p> <p><i>INSURER'S INITIALS X [Signature]</i></p>					
<b>TOTAL PREMIUMS must agree with Block "A" Above --&gt; TOTAL \$</b>					<b>846,896.00</b>

REMAINING PROVISIONS OF SECURITY AGREEMENT

Page 3 of 3

- 2. PROMISE OF REPAYMENT:** The insured requests AFCO to pay the premiums on the policies shown above. The insured promises to pay to AFCO at its office the amount stated in Block F above, according to the Payment Schedule shown above subject to the rest of the terms of this contract.
- 3. SECURITY INTEREST:** The insured assigns to AFCO as security for the total amount payable in this Agreement any and all unearned premiums and dividends which may become payable under the insurance policies and loss payments which reduce the unearned premiums, subject to any mortgagee or loss payee interest. The insured gives to AFCO a security interest in all items mentioned in this paragraph.
- 4. DEFAULT CHARGES:** If the insured is more than 5 days late in making an installment payment to AFCO, then the insured will pay to AFCO, in addition to the delinquent installment, a default charge of 5% of the unpaid balance of the delinquent installment or \$10, whichever is greater. If the loan is primarily for personal, family or household purposes, the default charge shall not exceed \$10.
- 5. FINANCE CHARGE:** The finance charge shown in Box D begins to accrue as of the earliest policy effective date.
- 6. THIS AGREEMENT BECOMES A CONTRACT:** This Agreement becomes a binding contract when AFCO mails a written acceptance to the insured.
- 7. WARRANTY OF ACCURACY:** The insured warrants to AFCO that the insurance policies listed in the schedule have been issued to the insured and are in full force and effect and that the insured has not assigned any interest in the policies except for the interest of mortgagees and loss payees.
- 8. REPRESENTATION OF SOLVENCY:** The insured represents that the insured is not insolvent or presently the subject of any insolvency proceeding.
- 9. CANCELLATION:** AFCO may cancel the insurance policies financed herein and the unpaid balance due to AFCO shall be immediately payable by the insured if, upon 10 days written notice to the insured, the insured does not pay any installment according to the terms of this Agreement. AFCO, at its option, may enforce payment of this debt without recourse to the security given to AFCO.
- 10. POWER OF ATTORNEY:** The insured appoints AFCO its Attorney-in-Fact with full authority to cancel the insurance policies financed herein for nonpayment of premium.
- 11. MONEY RECEIVED AFTER NOTICE OF CANCELLATION:** Any payments made to AFCO after AFCO's Notice of Cancellation of the insurance policies has been mailed may be credited to the insured's account without affecting the acceleration of this Agreement and without any liability or obligation on AFCO's part to request the reinstatement of the cancelled insurance policies. Any money AFCO receives from an insurance company shall be credited to the amount due AFCO with any surplus being paid over to the insured or the insured's agent for the benefit of the insured. No refund of less than \$1.00 shall be made. If there is a balance due after AFCO receives the unearned premiums, dividends or loss payments from the insurance company then the insured will pay the balance to AFCO with interest at the rate shown in this contract.
- 12. REFUNDS:** The insured will receive a refund of the finance charge if the account is prepaid in full prior to the last installment due date. The refund shall be computed according to the Rule of 78s subject to a \$20 nonrefundable charge. If the refund is less than \$1, no refund shall be made.
- 13. INSURANCE AGENT OR BROKER:** AFCO makes no warranties or representations concerning the financed insurance coverage nor has it played any part in the selection, structuring or acquisition of such coverage. This Agreement represents the entire understanding of the parties. AFCO has not authorized any party whatsoever to make any representations, commitments or promises or to play any role with respect to this premium finance transaction other than completing this contract on behalf of the insured.
- 14. SPECIAL INSURANCE POLICIES:** If the insurance policy issued to the insured is auditable or is a reporting form policy or subject to retrospective rating, then the insured promises to pay the insurance company the earned premium computed in accordance with the policy provisions which is in excess of the amount of premium advanced by AFCO which the insurance company retains.
- 15. CANCELLATION CHARGES:** If AFCO cancels the insurance policies, then the insured will pay AFCO a cancellation charge equal to the difference between \$10 and the default charge.
- 16. ATTORNEY FEES:** If, for collection, this Agreement is placed in the hands of an attorney who is not a salaried employee of AFCO, then the insured agrees to pay the attorney fees but no more than 20% of the amount due and payable under this Agreement.
- 17. SUCCESSORS AND ASSIGNS:** All legal rights given to AFCO shall benefit AFCO's successors and assigns. The insured agrees not to assign the policy without AFCO's written consent except for the interest of mortgagees and loss payees.
- 18. MISSING INFORMATION:** If the policy has not been issued at the time of signing this Agreement, then the insured agrees the name of the insurance company, and the policy numbers of the insurance policies may be left blank and may be subsequently inserted in this Agreement. AFCO will notify the insured of this information on its written Notice of Acceptance.
- 19. ADDITIONAL PREMIUMS:** The money paid by AFCO is only for the premium as determined at the time the insurance policy is issued. AFCO's payment shall not be applied by the insurance company to pay for any additional premiums owed by the insured as a result of any type of misclassification of the risk. The insured agrees to pay the company any additional premiums which become due for any reason. AFCO may assign to the company any rights it has against the insured for premiums due the company in excess of the premiums returned to AFCO.
- 20. AGENT'S WARRANTIES:** To convince AFCO to enter this Agreement and accept the security underlying this Agreement, the person executing this Agreement, if not the insured, warrants severally and as the duly authorized agent of the insured that he is the duly authorized agent of the insured appointed specifically to enter into this transaction on the insured's behalf; that he can perform any act the insured could or should perform with respect to this transaction; that he will hold in trust for AFCO any payments made or credited to the insured through the undersigned or to the undersigned, directly, indirectly, actually or constructively, by any of the insurance companies and that he will pay the monies to AFCO upon demand to satisfy the then outstanding indebtedness of the insured.
- 21. LAW GOVERNING THIS AGREEMENT:** The insured agrees that this Agreement shall be governed by the laws of the State of Florida.
- 22. DISHONORED CHECK:** If an insured's check is returned because of insufficient funds to pay it, AFCO may impose a charge of \$10.
- 23. ENDORSEMENTS:** The insured agrees that AFCO may endorse his or her name on any check or draft for all monies that may become due from the insuring company and apply the same as payment of this Agreement returning any excess to his or her agent, provided that if such excess is in an amount less than \$1, no refund shall be made.

INSURED'S INITIALS


**ADDENDUM TO PREMIUM FINANCE AGREEMENT**

It is understood and agreed by and between Ruden McClosky P.A. (the "Insured") and AFCO Credit Corporation ("AFCO") that the following amendment is made to the attached Premium Finance Agreement ("PFA"):

On Page 3 of the PFA, Paragraph 9 which is titled CANCELLATION is amended so that the words "by certified mail, return receipt requested" are inserted in the second line of the paragraph after the words "written notice."

*Ruden McClosky P.A.*

By:  *U.S.*

Signature of Insured or Authorized Representative  
*Bruce D. Goodman, Vice Pres.*

*Vice President*

Title

*August 1, 2011*

Date



# EXHIBIT B

**AFCO** 4501 College Boulevard, Suite 320, Leawood, KS 66211  
 Tel: 800-288-6901  
 Fax: 913-491-3912

INSURED: Ruden McClosky P.A.

ACCT. NO.: 17-10-113092-7

**INVOICE COLLECTION RECORD**

<u>DATE</u>	<u>TYPE OF PAYMENT</u>	<u>CHARGE</u>	<u>CREDIT</u>	<u>BALANCE</u>
08/23/2011	Total Premium	846,896.00		846,896.00
08/23/2011	Finance Charge	12,261.99		859,157.99
08/23/2011	Down Payment		169,379.00	689,778.99
09/06/2011	Payment - September		76,642.11	613,136.88
10/06/2011	Payment - October		76,642.11	536,494.77
11/03/2011	Payment - November		76,642.11	459,852.66

# EXHIBIT C

17-10-113382-9



**Premium Finance Agreement**

14 Wall Street, Suite 8A-19, New York, NY 10005  
 TEL. NOS. 212-401-4400 800-288-0787

(CHECK APPROPRIATE BOX)

PERSONAL  
 COMMERCIAL

A	TOTAL PREMIUMS	AGENT (NAME & PLACE OF BUSINESS) Aon Risk Services Northeast, Inc. 199 Water Street 35th Floor New York, NY ZIP CODE 10038	PRODUCER CODE NO. 10361381	INSURED (NAME & RESIDENCE OR BUSINESS ADDRESS) Ruden McClosky P.A. 200 East Broward Boulevard Suite 1500 Fort Lauderdale, FL ZIP CODE 33301			
	\$ 191,111.56		57-37158				
B	DOWN PAYMENT						
\$	38,222.00						
C	AMOUNT FINANCED (A Minus B) \$ 152,889.56	<b>PAYMENT SCHEDULE</b>					
		NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	WHEN PAYMENTS ARE DUE			
		9 (Monthly)	\$17,295.18	FIRST INSTALLMENT DUE 11/01/2011	INSTALLMENT DUE DATES 1st		
D	FINANCE CHARGE \$ 2,231.91	<b>SCHEDULE OF POLICIES</b>					
		POLICY PREFIX AND NUMBER	EFFECTIVE DATE OF POLICY/ANNUAL INSTALLMENT	NAME OF INSURANCE COMPANY AND NAME AND ADDRESS OF GENERAL OR POLICY ISSUING AGENT	TYPE OF COVER	MONTHS COVERED BY PREMIUM	PREMIUM \$
E	DOCUMENTARY STAMP TAX \$ 535.15	025031763	10/01/2011	Lexington Insurance Company Risk Specialists Company Insurance Agency, Inc. 100 Summer Street 18th Floor Boston, MA 02110 USA Fee: 1-467775001 Tax:	PROP	12	177,940.00
F	TOTAL OF PAYMENTS (C + D + E) \$ 155,656.62						
G	ANNUAL PERCENTAGE RATE 3.490%						
TOTAL PREMIUMS must agree with Block "A" Above → TOTAL \$ 191,111.56							

**SECURITY AGREEMENT**

1. DEFINITIONS: The above named insured ("the insured") is the debtor. AFCO Credit Corporation ("AFCO"), is the lender to whom the debt is owed. Singular words shall mean plural and vice versa as may be required in order to give the Agreement meaning. "Insurance company or company", "insurance policy or policy" and "premium" refer to those items listed under "Schedule of Policies".  
 NOTICE: 1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACE. 2. YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS AGREEMENT. 3. UNDER THE LAW, YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS TO OBTAIN A PARTIAL REFUND OF THE SERVICE CHARGE.

THE INSURED AGREES TO THE PROVISIONS ABOVE AND ON THE LAST PAGE OF THIS AGREEMENT

Date 9/30/11

*Ruden McClosky P.A.*  
*Bruce D. Gashland*  
 SIGNATURE OF INSURED(S) Bruce D. Gashland  
 OR DULY AUTHORIZED AGENT OF INSURED(S) vice Pres.

**PRODUCER'S REPRESENTATIONS**

The undersigned warrants and agrees:

(1) the insured has received a copy of this Agreement, and the Required Federal Truth-in-Lending Disclosures for Personal Lines Insurance, if applicable, (2) the policies are in full force and effect and the information in the schedule of policies and the premiums are correct, (3) the insured has authorized this transaction and recognizes the security interest assigned herein, (4) to hold in trust for AFCO any payments made or credited to the insured through or to the undersigned, directly, indirectly, actually or constructively by any of the insurance companies and to pay the monies to AFCO upon demand to satisfy the then outstanding indebtedness of the insured and that any lien the undersigned now has or hereafter may acquire on any return premium arising out of the above listed insurance policies is subordinated to AFCO's lien or security interest therein, (5) there are no exceptions to the policies financed other than those indicated and the policies comply with AFCO's eligibility requirements, (6) no Audit or Reporting Form Policies, policies subject to Retrospective Rating or to minimum earned premiums are included except as indicated and that the Deposit or Provisional Premiums are not less than anticipated premiums to be earned for the full term of the policies, if policy is subject to minimum earned premium, it is \$ 44,485.00, (7) the policies can be cancelled by the insured or the company on 10 days notice and the unearned premiums will be computed on the standard short rate or pro rata table except as indicated, (8) the undersigned represents that a proceeding in bankruptcy, receivership or insolvency has not been instituted by or against the named insured or if the named insured is the subject of such a proceeding it is noted on the Premium Finance Agreement in the space in which the insured's name and address is placed.

Date 10/3/11

*Thomas M. Dwyer*  
 SIGNATURE OF AGENT OR BROKER

"Florida documentary stamp tax required by law in the amount of \$535.15 has been paid or will be paid in full to the Department of Finance, Certificate of Registration # 15-2847-01-23-01" (201133 (6), F.S.

REMAINING PROVISIONS OF SECURITY AGREEMENT

Page 2 of 2

- 2. PROMISE OF REPAYMENT:** The insured requests AFCO to pay the premiums on the policies shown above. The insured promises to pay to AFCO at its office the amount stated in Block F above, according to the Payment Schedule shown above subject to the rest of the terms of this contract.
- 3. SECURITY INTEREST:** The insured assigns to AFCO as security for the total amount payable in this Agreement any and all unearned premiums and dividends which may become payable under the insurance policies and loss payments which reduce the unearned premiums, subject to any mortgagee or loss payee interest. The insured gives to AFCO a security interest in all items mentioned in this paragraph.
- 4. DEFAULT CHARGES:** If the insured is more than 5 days late in making an installment payment to AFCO, then the insured will pay to AFCO, in addition to the delinquent installment, a default charge of 5% of the unpaid balance of the delinquent installment or \$10, whichever is greater. If the loan is primarily for personal, family or household purposes, the default charge shall not exceed \$10.
- 5. FINANCE CHARGE:** The finance charge shown in Box D begins to accrue as of the earliest policy effective date.
- 6. THIS AGREEMENT BECOMES A CONTRACT:** This Agreement becomes a binding contract when AFCO mails a written acceptance to the insured.
- 7. WARRANTY OF ACCURACY:** The insured warrants to AFCO that the insurance policies listed in the schedule have been issued to the insured and are in full force and effect and that the insured has not assigned any interest in the policies except for the interest of mortgagees and loss payees.
- 8. REPRESENTATION OF SOLVENCY:** The insured represents that the insured is not insolvent or presently the subject of any insolvency proceeding.
- 9. CANCELLATION:** AFCO may cancel the insurance policies financed herein and the unpaid balance due to AFCO shall be immediately payable by the insured if, upon 10 days written notice to the insured, the insured does not pay any installment according to the terms of this Agreement. AFCO, at its option, may enforce payment of this debt without recourse to the security given to AFCO.
- 10. POWER OF ATTORNEY:** The insured appoints AFCO its Attorney-in-Fact with full authority to cancel the insurance policies financed herein for nonpayment of premium.
- 11. MONEY RECEIVED AFTER NOTICE OF CANCELLATION:** Any payments made to AFCO after AFCO's Notice of Cancellation of the insurance policies has been mailed may be credited to the insured's account without affecting the acceleration of this Agreement and without any liability or obligation on AFCO's part to request the reinstatement of the cancelled insurance policies. Any money AFCO receives from an insurance company shall be credited to the amount due AFCO with any surplus being paid over to the insured or the insured's agent for the benefit of the insured. No refund of less than \$1.00 shall be made. If there is a balance due after AFCO receives the unearned premiums, dividends or loss payments from the insurance company then the insured will pay the balance to AFCO with interest at the rate shown in this contract.
- 12. REFUNDS:** The insured will receive a refund of the finance charge if the account is prepaid in full prior to the last installment due date. The refund shall be computed according to the Rule of 78s subject to a \$20 nonrefundable charge. If the refund is less than \$1, no refund shall be made.
- 13. INSURANCE AGENT OR BROKER:** AFCO makes no warranties or representations concerning the financed insurance coverage nor has it played any part in the selection, structuring or acquisition of such coverage. This Agreement represents the entire understanding of the parties. AFCO has not authorized any party whatsoever to make any representations, commitments or promises or to play any role with respect to this premium finance transaction other than completing this contract on behalf of the insured.
- 14. SPECIAL INSURANCE POLICIES:** If the insurance policy issued to the insured is auditable or is a reporting form policy or subject to retrospective rating, then the insured promises to pay the insurance company the earned premium computed in accordance with the policy provisions which is in excess of the amount of premium advanced by AFCO which the insurance company retains.
- 15. CANCELLATION CHARGES:** If AFCO cancels the insurance policies, then the insured will pay AFCO a cancellation charge equal to the difference between \$10 and the default charge.
- 16. ATTORNEY FEES:** If, for collection, this Agreement is placed in the hands of an attorney who is not a salaried employee of AFCO, then the insured agrees to pay the attorney fees but no more than 20% of the amount due and payable under this Agreement.
- 17. SUCCESSORS AND ASSIGNS:** All legal rights given to AFCO shall benefit AFCO's successors and assigns. The insured agrees not to assign the policy without AFCO's written consent except for the interest of mortgagees and loss payees.
- 18. MISSING INFORMATION:** If the policy has not been issued at the time of signing this Agreement, then the insured agrees the name of the insurance company, and the policy numbers of the insurance policies may be left blank and may be subsequently inserted in this Agreement. AFCO will notify the insured of this information on its written Notice of Acceptance.
- 19. ADDITIONAL PREMIUMS:** The money paid by AFCO is only for the premium as determined at the time the insurance policy is issued. AFCO's payment shall not be applied by the insurance company to pay for any additional premiums owed by the insured as a result of any type of misclassification of the risk. The insured agrees to pay the company any additional premiums which become due for any reason. AFCO may assign to the company any rights it has against the insured for premiums due the company in excess of the premiums returned to AFCO.
- 20. AGENT'S WARRANTIES:** To convince AFCO to enter this Agreement and accept the security underlying this Agreement, the person executing this Agreement, if not the insured, warrants severally and as the duly authorized agent of the insured: that he is the duly authorized agent of the insured appointed specifically to enter into this transaction on the insured's behalf; that he can perform any act the insured could or should perform with respect to this transaction; that he will hold in trust for AFCO any payments made or credited to the insured through the undersigned or to the undersigned, directly, indirectly, actually or constructively, by any of the insurance companies and that he will pay the monies to AFCO upon demand to satisfy the then outstanding indebtedness of the insured.
- 21. LAW GOVERNING THIS AGREEMENT:** The insured agrees that this Agreement shall be governed by the laws of the State of Florida.
- 22. DISHONORED CHECK:** If an insured's check is returned because of insufficient funds to pay it, AFCO may impose a charge of \$10.
- 23. ENDORSEMENTS:** The insured agrees that AFCO may endorse his or her name on any check or draft for all monies that may become due from the insuring company and apply the same as payment of this Agreement returning any excess to his or her agent, provided that if such excess is in an amount less than \$1 no refund shall be made.

INSURED'S INITIALS


# EXHIBIT D

**AFCO** 4501 College Boulevard, Suite 320, Leawood, KS 66211  
 Tel: 800-288-6901  
 Fax: 913-491-3912

INSURED : Ruden McClosky P.A.  
 ACCT. NO. : 17-10-113382-9

**INVOICE COLLECTION RECORD**

<u>DATE</u>	<u>TYPE OF PAYMENT</u>	<u>CHARGE</u>	<u>CREDIT</u>	<u>BALANCE</u>
10/04/2011	Total Premium	191,111.56		191,111.56
10/04/2011	Finance Charge	2,767.06		193,878.62
10/04/2011	Down Payment		38,222.00	155,656.62
11/03/2011	Payment - November		17,295.18	138,361.44