

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

ORIGINAL

In re: ) Chapter 11  
 )  
ACandS, Inc., ) Case No. 02-12687 (JKF)  
 )  
Debtor. )

Objection Deadline: August 17, 2007 at 4:00 p.m. Prevailing Eastern Time  
Hearing Date: August 28, 2007 at 3:00 p.m. Prevailing Eastern Time (in Pittsburgh, PA)

**NOTICE OF DEBTOR’S MOTION FOR APPROVAL OF  
SETTLEMENT AND BUYBACK AGREEMENT AMONG  
TRAVELERS, ACANDS PARTIES, AND CERTAIN OTHER PARTIES**

**TO: (1) the U.S. Trustee; (2) counsel for the Committee; (3) counsel for the Legal Representative; (4) counsel for Travelers; (5) counsel for the ACandS Parties; (6) counsel for the Irex Entities; (7) those parties set forth on ACandS’s Bankruptcy Rule 2002 service list; (8) those law firms that represent asbestos personal injury claimants that have filed 2019 statements in ACandS’s bankruptcy case; (9) additional law firms that represent asbestos personal injury claimants of which the Debtor is aware that have not (a) filed an entry of appearance in ACandS’s bankruptcy case and/or (b) filed a 2019 statement in ACandS’s bankruptcy case; and (10) all known asbestos property damage claimants with Claims against ACandS.**

ACandS, Inc. (the “Debtor”), the debtor and debtor-in-possession in the above-captioned case, has filed the attached *Debtor’s Motion for Approval of Settlement and Buyback Agreement Among Travelers, ACandS Parties, and Certain Other Parties* (the “Motion”). Pursuant to the Motion, the Debtor seeks the entry of an order (the “Approval Order”) approving a settlement agreement (the “Settlement Agreement”) among: the Debtor; certain of its affiliates (the “ACandS Parties”); certain of its former affiliates (the “Former Irex Entities”); certain other entities (all as more fully set forth and defined in the Settlement Agreement); and The Travelers Indemnity Company, Travelers Casualty and Surety Company (f/k/a The Aetna Casualty and

Date 7-9-07  
Docket # 2864

Surety Company), The Standard Fire Insurance Company, St. Paul and Marine Insurance Company, United States Fidelity and Guaranty Company, and certain of their affiliates (collectively and as further defined in the Settlement Agreement, "Travelers"). As part of the Settlement, the Approval Order will authorize and approve the sale of certain insurance policies issued by Travelers (the "Travelers Insurance Policies," as defined in the Settlement Agreement), free and clear of any and all claims, liens, encumbrances and interest of any kind, to Travelers.

Any response or objection to the Motion must be filed with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 on or before August 17, 2007 by 4:00 p.m. Prevailing Eastern Time. At the same time, you must also serve a copy of the objection or response on: (i) counsel for the Debtor, Pachulski Stang Ziehl Young Jones & Weintraub LLP, Attn: Laura Davis Jones, Esquire, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705; (ii) The Office of the United States Trustee, Attn: Richard Schepacarter, Esquire, J. Caleb Boggs Federal Building, 844 King Street, Wilmington, Delaware 19801; (iii) Counsel to the Official Committee of Asbestos Personal Injury Claimants: (A) Campbell & Levine, LLC, Attn: Marla Eskin, Esquire, 800 North King Street, Suite 300, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, (B) Campbell & Levine, LLC, Philip E. Milch, Esquire, 1700 Grant Building, Pittsburgh, Pennsylvania 15219, and (C) Elihu Inselbuch, Esquire, Caplin & Drysdale, Chartered, 399 Park Avenue, 27th Floor, New York, New York 10022; (iv) Insurance Counsel for the Debtor, Gilbert Randolph LLP, Attn: David B. Killalea, Esquire, 1100 New York Ave. NW, Suite 700, Washington, D.C. 20005-3324; and (v) Counsel to the Future Claimants Representative, Edwin J. Harron, Esquire,

Young Conaway Stargatt & Taylor LLP, 1000 West Street, 17<sup>th</sup> Floor, P.O. Box 391,  
Wilmington, Delaware 19899-0391.

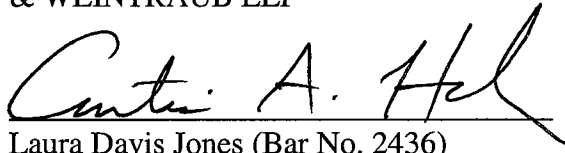
IF YOU FAIL TO TIMELY RESPOND IN ACCORDANCE WITH THIS  
NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION  
WITHOUT FURTHER NOTICE OR HEARING.

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IF OBJECTIONS OR RESPONSES ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, A HEARING ON THE MOTION WILL BE HELD ON AUGUST 28, 2007 AT 3:00 P.M. PREVAILING EASTERN TIME BEFORE THE HONORABLE JUDITH K. FITZGERALD, AT THE UNITED STATES BANKRUPTCY COURT, LOCATED AT 5490 US STEEL TOWER, 600 GRANT STREET, PITTSBURGH, PA 15219.

Dated: July 9, 2007

PACHULSKI STANG ZIEHL YOUNG JONES  
& WEINTRAUB LLP

A handwritten signature in black ink, appearing to read "Curtis A. Hehn", written over a horizontal line.

Laura Davis Jones (Bar No. 2436)

David M. Bertenthal (CA Bar No. 167624)

Curtis A. Hehn (Bar No. 4264)

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Counsel for ACandS, Inc.,

Debtor and Debtor in Possession

U.S. BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re: )  
 ) Chapter 11  
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ACandS, INC. )  
 ) Case No. 02-12687 (JKF)  
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Debtor-in-Possession )

**Objection Deadline: August 17, 2007, 2007 at 4:00 p.m.**

**Hearing Date: August 28, 2007, 2007 at 3:00 p.m.**

**DEBTOR'S MOTION FOR APPROVAL OF SETTLEMENT AND  
BUYBACK AGREEMENT AMONG TRAVELERS,  
ACANDS PARTIES, AND CERTAIN OTHER PARTIES**

ACandS, Inc. ("ACandS" or "Debtor") respectfully submits this motion (the "Motion") for approval of (1) the Settlement and Policy Buyback Agreement, Release, and Covenant Not To Sue (the "Agreement" or the "Settlement and Buyback Agreement," attached hereto as Exhibit 1, by and among the Debtor, the ACandS Parties, Irex, the Former Irex Entities, the Official Committee of Unsecured Creditors (the "ACC"), the Legal Representative for Future Claimants (the "FCR"), and Travelers (collectively, the "Parties") and all exhibits thereto (including, without limitation, the Trustee's Consent and Mutual Release (attached as Exhibit F to the Agreement)), (2) the sale of the Travelers Insurance Policies free and clear of all liens, claims, encumbrances and interests, with all rights in the Travelers Insurance Policies attaching to the Settlement and Buyback Amount, and (3) the Escrow Agreement (the "Escrow Agreement" (attached as Exhibit D to the Agreement)).<sup>1</sup>

The Settlement and Buyback Agreement constitutes a critical step towards the successful resolution of the Debtor's bankruptcy case. Among other things, the Agreement resolves over

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<sup>1</sup> Capitalized terms not defined herein shall have the defined meanings set forth in the Agreement.

twenty-five years of heavily-litigated disputes with Travelers, the Debtor's most significant insurer, over coverage that the Debtor believes to be its most valuable asset. Subject to the satisfaction of certain conditions precedent, the Agreement will bring into the estate \$449,000,000 (plus investment income earned beginning shortly after the Approval Order is entered). The Debtor will soon file a plan of reorganization that is consistent with the Agreement, and Travelers will not object to or oppose that plan. Travelers will also withdraw its proof of claim in ACandS's Chapter 11 case. As a result of these and other important benefits, the Settlement and Buyback Agreement marks significant progress in the Debtor's efforts to confirm a plan of reorganization.

Absent this Agreement, the Debtor faces significant risks in litigation with Travelers and in concluding a successful bankruptcy case. Although ACandS believes that Travelers is obligated under the Travelers Insurance Policies to pay substantial amounts for ACandS's asbestos-related liabilities, Travelers asserts multiple coverage defenses, at least some of which, if successful, would eliminate all coverage under the Travelers Insurance Policies. Further, Travelers has filed a claim in the bankruptcy case asserting, among other things, that ACandS owes Travelers millions of dollars that Travelers believes it overpaid to ACandS prior to the bankruptcy filing. Since 2000, ACandS and Travelers have litigated various disputes in six federal district court cases, as well as in the U.S. Court of Appeals for the Third Circuit, the U.S. Supreme Court, at least one state court, multiple alternative dispute resolution proceedings, and through proceedings in this Court. The litigations involve substantial risks to both parties, including the possibility that, absent the Agreement, Travelers would have no further obligation to ACandS.

During the course of their extensive litigation, ACandS and Travelers have continued to explore settlement possibilities through numerous, protracted and often contentious negotiations, dating back to at least 1999, to resolve finally all their disputes. These negotiations followed a number of other settlement agreements entered into between ACandS and Travelers from 1985 through 1989 that resolved important disputes and other litigation, but left a number of vital issues open for future resolution. Since 2000, while engaged in hard-fought and multi-forum litigation, ACandS and Travelers engaged the services of three prominent mediators to facilitate their settlement efforts of those remaining open issues. Some of the prior efforts came close to producing a final resolution, but none was consummated. Now, after having invested hundreds of additional hours of their principals' and outside counsel's time, and having directly involved both the ACC and the FCR – both of which are parties to the Agreement – in the negotiation process, ACandS's and Travelers' difficult and lengthy negotiations have produced a final resolution of all of their disputes that secures meaningful relief for the creditors of the Debtor's estate.

To ensure that the estate enjoys the considerable benefits to be provided under the Agreement and to avoid the material risks to the estate were the Debtor to litigate the compromised issues to conclusion, the Debtor respectfully requests that this Court approve the Settlement and Buyback Agreement, the sale of the Travelers Insurance Policies back to Travelers, and the Escrow Agreement.

### **JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This Motion presents a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (M), (N) and (O). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The basis for the relief requested is, among other things, 11 U.S.C. §§ 105(a), 363(b) and (f), 1107, and 1108 and Rules 2002, 6004, 9014, and 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

## **BACKGROUND**

### **The Debtor’s Bankruptcy Petition**

3. On September 16, 2002 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
4. The Debtor continues in possession of its properties and is operating and managing its businesses as a debtor and debtor in possession pursuant to 11 U.S.C. §§ 1107 and 1108.

### **Asbestos Claims**

5. As of September 2002, the Debtor faced approximately 300,000 asbestos claims seeking damages for bodily injuries allegedly caused by exposure to asbestos fibers in insulation products used at one time by the Debtor in its business.
6. When ACandS filed for protection under the Bankruptcy Code, it expected that new asbestos claims would continue to be filed against it and that it would continue to incur costs to administer, evaluate, defend, and settle or pay judgments on account of such asbestos claims.
7. In the approximately six months before its bankruptcy filing, ACandS settled approximately 200,000 asbestos-related personal injury claims that have not been paid.

### **The Travelers Policies and the Coverage Disputes**

8. Prior to the Execution Date, Travelers issued or allegedly issued the Travelers Insurance Policies, which ACandS alleges provide insurance coverage to ACandS and, in some circumstances, to ACandS Parties and/or Former Irex Entities.

9. ACandS and Travelers Casualty and Surety Company are signatories to the Agreement Concerning Asbestos-Related Claims dated June 19, 1985 (the “Wellington Agreement”) and the Letter Agreement dated October 24, 1988 (the “1988 Agreement”). ACandS and The Travelers Indemnity Company are parties to two Settlement Agreements dated March 31, 1989 and April 4, 1989 (the “1989 Agreements”). The Wellington Agreement, the 1988 Agreement, and the 1989 Agreements resolve, among other things, certain disputes concerning insurance coverage for Asbestos-Related Claims.
10. The main policies at issue in the disputes are 1976, 1977, 1978 and 1979 primary insurance policies that Travelers issued to ACandS. ACandS contends that these policies provide two fundamental types of coverage potentially applicable to asbestos claims. One coverage extends to liabilities of ACandS arising out of the policies’ “products” or “completed operations” hazards, as those hazards are defined in the policies (“products/completed operations”). Coverage for products/completed operations claims generally are subject to aggregate limits. The other type of coverage extends to all liabilities that do not arise under the specifically-defined products or completed operations hazards, and is generally known as “general liability,” “operations,” or “non-products” coverage (for ease of reference, “non-products”). ACandS contends that these four primary Travelers Insurance Policies contain no aggregate limits applicable to non-products asbestos claims, and that such coverage should be available to pay much of ACandS’s asbestos-related liabilities. Travelers disagrees, and contends that it owes no further obligation to ACandS, and that ACandS owes it millions of dollars for excess payments that Travelers previously made to or on behalf of ACandS.

11. ACandS and Travelers have litigated many complicated, time-consuming coverage disputes over the course of more than 25 years. Several such disputes currently are pending that could have a tremendous impact on the respective rights and obligations of ACandS and Travelers concerning insurance coverage for asbestos-related claims (collectively, the “Coverage Disputes”). The Coverage Disputes include pending litigation between Travelers and ACandS (and in one instance certain other parties) in multiple civil actions (the “Litigations”).
12. Since 2000, ACandS and Travelers have litigated in six federal district court cases, as well as in the U.S. Court of Appeals for the Third Circuit, the U.S. Supreme Court, at least one state court, multiple alternative dispute resolution proceedings and through proceedings before this Court. Several of the most significant pending Litigations between ACandS and Travelers are described below.

#### **Number of Occurrences Litigation**

13. In September 2000, ACandS initiated litigation against Travelers in the U.S. District Court for the Eastern District of Pennsylvania (the “Number of Occurrences Litigation”) seeking a declaration that each of the 1976, 1977, 1978 and 1979 primary Travelers Insurance Policies provides up to \$1 million in coverage for each non-products asbestos-related bodily injury claim, to which no overall aggregate limit applies under the terms of the policies.
14. By order dated September 8, 2004, the District Court dismissed the Number of Occurrences Litigation as moot based on the result in the Non-Products ADR Proceeding (described below). ACandS appealed the District Court’s decision to the U.S. Court of Appeals for the Third Circuit, which issued an opinion on January 19, 2006 vacating the

District Court's order. *See ACandS, Inc. v. Travelers Casualty & Surety Co.*, 435 F.3d 252 (3d Cir. 2006). Travelers filed a petition for a writ of certiorari to the U.S. Supreme Court, which ACandS opposed and which was denied on May 22, 2006. The case was remanded to the District Court on May 26, 2006 to proceed on the merits.

15. ACandS believes that it has very strong arguments based on the policies, the parties' course of conduct under the policies, and the case law to support its position that the policies provide up to \$1 million in coverage for each non-products asbestos-related bodily injury claim. Travelers believes it has very strong defenses to ACandS's claims and that it has no further obligations under its policies.
16. If the Settlement and Buyback Agreement is not approved, Travelers can be expected to continue to litigate this proceeding vigorously. One potential outcome of the Number of Occurrences Litigation is that Travelers, if successful in prosecuting its defenses, would owe no further coverage to ACandS, regardless of the outcome of any other proceeding.

#### **Non-Products Percentage Arbitration**

17. At the end of January 2001, ACandS initiated a binding arbitration proceeding (the "Non-Products ADR Proceeding") against Travelers in which ACandS sought a determination pursuant to the 1988 Agreement that over 90 percent of ACandS's losses and defense costs arising from asbestos-related bodily injury claims are properly characterized as non-products claims that are not subject to any overall aggregate limit under the same four primary Travelers Insurance Policies at issue in the Number of Occurrences Litigation. The proceeding was tried in April and May 2003 before a three-judge arbitration panel. On July 31, 2003, a divided panel issued a decision (the "Award"). The parties disagreed over the meaning and impact of the Award. ACandS contended that, to the extent that

the terms of the Award were upheld, there would be no allocation of ACandS's future asbestos-related liabilities to Travelers non-products coverage under the four policies at issue, but that 45 percent of all liability and defense expenditures paid or incurred before the decision was issued would be covered under the non-products coverage afforded without aggregate limits under those policies. Travelers contended that, to the extent that the terms of the Award were upheld, Travelers would have no further obligations to ACandS.

18. On October 30, 2003, ACandS filed a motion to vacate the arbitration Award in the U.S. District Court for the Eastern District of Pennsylvania, arguing that the arbitral majority lacked authority to render a decision that reduced Travelers' coverage obligations to ACandS (or that, according to Travelers, eliminated those obligations completely), and that the majority also acted in violation of the automatic stay imposed by section 362(a) of the Bankruptcy Code by awarding such affirmative relief to Travelers at the expense of ACandS's estate. By order dated September 8, 2004, the District Court denied ACandS's motion to vacate. ACandS appealed that decision to the U.S. Court of Appeals for the Third Circuit, which in the same opinion referenced above reversed the District Court's decision and remanded with instructions to vacate the Award. *See ACandS, Inc. v. Travelers Casualty & Surety Co.*, 435 F.3d 252 (3d Cir. 2006). Travelers subsequently filed a petition for a writ of certiorari with the U.S. Supreme Court, which ACandS opposed and which was denied on May 22, 2006. On May 26, 2006, the case was remanded to the District Court with instructions to vacate the arbitration Award.
19. Travelers continues to argue that, under the terms of the Award and the applicable contracts and law, and the Third Circuit's decision notwithstanding, it has no further

