

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

In re:	)	
	)	
ADAM AIRCRAFT INDUSTRIES, INC.	)	Case No. 08-11751 MER
EIN: 161643299,	)	Chapter 7
	)	
Debtor.	)	

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**TRUSTEE’S MOTION FOR LIMITED AUTHORITY  
TO OPERATE BUSINESS PENDING AUCTION**

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Jeffrey A. Weinman, as Chapter 7 Trustee for the Adam Aircraft Industries, Inc. bankruptcy estate (the “Trustee”), for his Motion for Limited Authority to Operate Business Pending Auction (this “Motion”), states:

**BACKGROUND**

1. On February 15, 2008 (the “Petition Date”), Adam Aircraft Industries, Inc. (the “Debtor”), filed its voluntary petition for relief under Chapter 7 of title 11, U.S.C. (the “Bankruptcy Code”). The Trustee is the duly appointed Chapter 7 Trustee in the Debtor’s bankruptcy case.

2. Before the Petition Date, the Debtor designed and manufactured advanced carbon composite aircraft and airframes for sale in civilian and government markets. The Debtor produced two carbon fiber aircraft: a centerline thrust, twin engine propeller plane (the A500) and a turbofan-powered business jet (the A700). The Debtor had achieved type certification<sup>1</sup> from the Federal Aviation Administration (the “FAA”) for the A500 before the Petition Date and had obtained type inspection authorization from the FAA – a milestone toward type certification

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<sup>1</sup> Type certification is generally awarded by aviation regulating bodies to manufacturers after a particular design of a civil aircraft has fulfilled airworthiness and safety requirements.

– for the A700. Although its main plant and offices are located at Centennial Airport outside of Denver, Colorado, the Debtor also has facilities in Pueblo, Colorado and Ogden, Utah. The Debtor ceased operating before the Petition Date.

3. Since commencement of the Debtor’s case, the Trustee has relied on certain key employees of the Debtor to assist in administering the Debtor’s estate. The Trustee anticipates that a bulk sale of the Debtor’s assets at auction will maximize value for creditors and he has filed a motion seeking approval of a form of bidding and auction procedures. The Trustee believes that final approval of a sale by April 9, 2008, will preserve and maximize the Debtor’s business assets, with a closing on or before April 15, 2008. The Trustee also will engage a liquidator to sell the Debtor’s assets quickly thereafter in the event that the bulk sale and auction cannot be consummated.

4. Through this Motion, the Trustee requests limited authority to operate the Debtor’s business pending consummation of the auction and sale process.

#### **ARGUMENT AND AUTHORITY**

5. The Bankruptcy Code provides that “[t]he court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate.” 11 U.S.C. § 721; *see Commodity Futures Trading Comm’n v. Weintraub*, 471 U.S. 343, 352 (1985). Authority to operate a business in Chapter 7 proceeding is appropriate “in a limited number of situations, such as where it appears that a business could be sold for a greater price as a going concern than would be obtained in ordinary liquidation.” *In re A&T Trailer, Inc.*, 53 B.R. 144, 147 (Bankr. D. Wyo. 1985).

6. The statutory option for a Chapter 7 trustee to run a debtor's business on a limited basis contemplates circumstances where preserving assets pending a future sale may result in an increased benefit to the estate as opposed to an immediate cessation of operations and piecemeal liquidation. *See, e.g., In re Quarter Moon Livestock Co.*, 116 B.R. 775, 782 (Bankr. D. Idaho 1990) (authorizing trustee to operate debtor's cattle business "to wait until fall to roundup and sell the cattle herd, and to maintain the livestock until that time"). The Court has discretion in considering requests to operate a debtor's business under § 721. *See In re Heissinger Res. Ltd.*, 67 B.R. 378, 384 (C.D. Ill. 1986).

7. In this case, the Trustee's authority for operating the business will be limited to preservation of the Debtor's equipment, facilities and plant locations, and to certain administrative tasks with a select number of former employees critical to maintaining value (the "Key Employees").<sup>2</sup> The Trustee will pay rent and utilities and fees for continuing the Debtor's computer network systems. Although the Trustee is still considering the options, freight charges may be necessary to transport assets from Ogden, Utah or Pueblo, Colorado to consolidate operations in one location, which would both streamline costs and facilitate due diligence for potential purchasers. The Key Employees will continue to compile historical financial information and related due diligence materials for marketing the Debtor's assets. The Key Employees also will continue efforts to reduce any risks associated with raw carbon fiber waste material at the Debtor's facilities and to monitor the Debtor's marketable carbon fiber to maintain its value.

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<sup>2</sup> On February 22, 2008, the Trustee filed a separate Application to Retain Key Employees for Estate Administration, requesting authority to engage the identified Key Employees for limited services in administering the Debtor's bankruptcy case. As set forth in that motion, the Trustee anticipates relying on those Key Employees and, if authorized to operate the Debtor's business, paying those employees hourly compensation for critical services.

8. Aside from those administrative matters and incidental Key Employee compensation, the Trustee does not anticipate the need for expanded operating authority. No new contracts for airplane or equipment sales will be negotiated or accepted; no flights of existing aircraft will be conducted; the manufacturing process will not be restarted for planes and accessories in the production line as of the Petition Date. With respect to funding operations for the few weeks necessary to complete a sale, the Trustee is in negotiations with the Debtor's senior secured lender concerning the use of cash collateral or other means of paying administrative expenses.

9. Limited authority to operate the business for administrative matters as requested by the Trustee will maximize value to the estate and will allow the Trustee to market and sell the Debtor's assets almost as if it were a going concern. The Trustee is informed and believes that former employees of the Debtor are actively seeking employment elsewhere. A protracted, disassembled sale process effectively will dismantle the Debtor's business, and along with it the potential for a purchaser to retain the former employees and ignite operations to realize the true value of the Debtor's assets as an ongoing aircraft production and development facility. The potential value to the estate of a cadre of skilled former employees to assist a purchaser after the auction is immeasurable, but real. And limited operating authority for the Trustee during the sale process will signal to the Debtor's former employees that the potential exists for renewed employment with a purchaser who may be interested in recommencing operations.

10. Because the Trustee contemplates operating authority for a brief period of time – no later than the end of April, 2008, the Trustee does not anticipate significant burdens of compliance with any disclosure and reporting requirements of the United States Trustee and § 704(8) of the Bankruptcy Code.

11. Although the Trustee does not believe that notice and a hearing is required under § 721, the Trustee is providing notice of this Motion pursuant to L.B.R. 202 in accordance with a separately filed motion to limit and shorten notice. The relief requested by the Trustee does not, either substantively or time-wise, run afoul of Fed. R. Bankr. P. 6003.

**CONCLUSION AND RELIEF REQUESTED**

WHEREFORE, for the foregoing reasons the Trustee requests that the Court grant the relief requested in this Motion authorizing limited business operations under § 721 of the Bankruptcy Code, and order such other relief as deemed appropriate.

Dated this 28<sup>th</sup> day of February, 2008.

**LINDQUIST & VENNUM P.L.L.P.**

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 28, 2008, the foregoing **TRUSTEE'S MOTION FOR LIMITED AUTHORITY TO OPERATE BUSINESS PENDING AUCTION**, was served by U.S. Mail, first class postage prepaid, to the parties on the attached list:

  
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/s/ Laura Lee Rippe

Label Matrix for local noticing  
1082-1  
Case 08-11751-MER  
District of Colorado  
Denver  
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