

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

**NOTICE OF HEARING AND MOTION FOR EXPEDITED HEARING AND FOR ORDER
AUTHORIZING DEBTORS TO PURCHASE A WORKER'S COMPENSATION
INSURANCE POLICY AND FOR APPROVAL OF ADDITIONAL SECURED
BORROWING FROM CAPITALSOURCE FINANCIAL, LLC**

TO: The entities specified in Local Rule 9013-3(a)(2).

1. Intrepid U.S.A., Inc. and the affiliated Debtors in the cases referenced above (collectively, "Debtors"), move the Court for the relief requested below and give notice of a hearing.

2. The Court will hold a hearing on this motion for expedited hearing and order authorizing Debtors to purchase a worker's compensation insurance policy and for approval of additional secured borrowing from Capitalsource Financial, LLC at 10:30 a.m. on September 9, 2004, in Courtroom No. 7 West of the United States Courthouse at 300 South Fourth Street, Minneapolis, Minnesota.

3. Local Rule 9006-1(b) provides for deadlines for filing any response to this motion. However, given that Debtors are seeking expedited relief, Debtors do not object to the timeliness of responses filed and delivered not later than 5:00 p.m. CDT on September 8, 2004.

**UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT
MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petitions commencing these Chapter 11 cases were filed on January 29, 2004 and April 12, 2004 (“Petition Dates”). These cases are now pending in this Court.

5. This motion arises under 11 U.S.C. §§ 363(b) and 364 and is filed pursuant to Bankruptcy Rules 9013 and 9014 and Local Rules 9013-1 through 9013-3. Debtors request a Court order authorizing them to enter into a contract of insurance with American Home Assurance Company and/or its affiliates, including AIG Risk Management (“AIG”) for the provision of worker’s compensation insurance for the policy year commencing on September 14, 2004 and ending on September 14, 2005. In addition, Debtors seek authority to obtain an overadvance on their post-petition Credit Facility from Capitalsource Finance, LLC.

BACKGROUND

6. Intrepid U.S.A., is the parent company who collectively with its direct and indirect subsidiaries or affiliates operate as home healthcare providers and nurse and medical staffing providers. The Intrepid operating companies serve primarily the elderly, homebound, disabled, and other disadvantaged individuals, providing in-home nurses, therapists, and administrators these patients require. Intrepid USA provides administrative and oversight services to each of the subsidiary companies that are involved in the provision of medical services. The Intrepid debtors have an annual payroll of approximately \$94 million and currently employ approximately 5,766 employees, consisting of 5,195 employees covered by the current worker’s compensation policy maintained by Debtors. Debtors operate in 31 states, primarily in the Midwest, South and Southeastern parts of the United States.

FACTS IN SUPPORT OF MOTION

7. Pursuant to an Order dated April 16, 2004, this Court approved Debtor Intrepid U.S.A.'s assumption of a pre-petition worker's compensation insurance policy with CNA Insurance. This policy requires Debtors to pay monthly premiums in the amount of \$90,900 and reimburse CNA for claims each calendar quarter. Quarterly payments for claim reimbursement are approximately \$350,000 to \$500,000 per quarter. The CNA insurance policy expires on September 14, 2004. CNA has declined to continue to insure the Debtors for the next policy year.

8. Debtors, through their agent, Hayes Companies, have negotiated with various insurance carriers to secure new insurance. However, given the types of business in which Debtors are engaged, Debtors' status in bankruptcy, and the number of Debtors' employees, few insurers were willing to provide quotes to insure Debtors.

9. Debtor has obtained quotes for two different policies from AIG. Attached as Exhibit A is a casualty insurance proposal from AIG for worker's compensation and employer's liability for the period of September 14, 2004 to September 14, 2005. Under the proposal, AIG would insure and administer a policy for workers' compensation.

10. AIG has proposed two options for insurance. Under the first option (the "Large Deductible Policy"), the premium cost is \$1,571,928 plus a surcharge of \$93,489, for a total up front cash payment of \$1,665,417. In addition, Debtors will assume ongoing responsibility to pay claims up to a maximum of \$500,000 per claim on a quarterly basis in arrears. Debtors anticipate these payments to be approximately \$250,000 per quarter. To secure Debtors' obligations to reimburse it for claims paid, AIG requires Debtors to post a letter of credit in the amount of \$3,806,400 at the inception of the policy period.

11. Debtors have arranged to finance the premium cost under the Large Deductible Policy from First Insurance Funding Corporation (“FIFC”) and have filed a Motion for an Order Authorizing Debtors to Enter Into Insurance Premium Finance Agreement. In that Motion, Debtors request the Court’s authorization to enter into a premium financing agreement with FIFC to pay AIG’s premiums. The terms of the financing are described in that motion.

12. To obtain the letter of credit, Debtors will need to borrow under the Post-Petition Revolving Credit and Security Agreement dated as of April 12, 2004, between Debtors and Capitalsource Finance, LLC (the “Credit Facility”). Debtors anticipate having insufficient availability under the Credit Facility to post the letter of credit. Debtors are currently in negotiations with CapitalSource for an overadvance under the Credit Facility. Debtors have requested an overadvance of approximately \$2.8 million. Debtors anticipate that if Capitalsource consents to make the overadvance Capitalsource will require payment of a fee. The terms of the overadvance, will be disclosed to the Official Committee of Unsecured Creditors, counsel for Debtors’ pre-petition lender, the United States Trustee and the court as soon as possible. The Debtors anticipate that the negotiations will require further amendment to the Post-Petition Credit Facility and approval of this Court. **DEBTORS GIVE NOTICE OF THEIR INTENT TO SEEK APPROVAL OF ANY SUCH AMENDMENT AT THE HEARING ON THIS MOTION.**

13. The second option from AIG is referred to as the Guaranteed Cost Policy. The premium cost of the Guaranteed Cost Policy is \$4,673,820 plus a surcharge of \$110,455, for a total of \$4,784,275. AIG requires that all of this amount be paid on or before September 14, 2004. This Option does not require the posting of a letter of credit and Debtors would not incur ongoing claims payments per quarter.

14. Under the Guaranteed Cost Policy, Debtors are not required to post a letter of credit. Nevertheless, because of the higher monthly premium costs, Debtors will need an over advance on the Credit Facility of \$1.0 million. While the over-advance is lower, the overall costs of such a policy are significantly higher and the financial impact on Debtors would be worse. Debtors estimate the cost of the Guaranteed Cost Policy is \$2.0 million more than the actual and projected costs under the Large Deductible Policy. In addition, if Debtors could purchase the Large Deductible Policy, Debtors would receive a return of all or most of the letter of credit at the conclusion of the policy, because Debtors will have reimbursed AIG for all claims paid under the Policy out of their cash flow generated from operations.

15. As described in the accompanying premium finance motion, Debtors have also arranged to finance the premium costs for the guaranteed cost policy with AICCO, Inc. The terms of the financing are described in that motion. Nevertheless, Debtors anticipate the need for the \$1.0 million overadvance in order to fund payments on the premium loan and to maintain sufficient liquidity to operate their businesses.

16. Debtors seek expedited hearing on this motion for cause. Debtors have sought either a renewal or replacement of workers' compensation insurance for many weeks. It was not until August 25, 2004, that Debtors received the proposal from AIG which led to further negotiations with AIG and efforts to secure premium financing. The financing proposals were obtained in late August and early September. Debtors must pay the full annual premium on or before September 14, 2004 in order to have insurance in place as of that date. Debtors will be left without insurance coverage if they fail to pay AIG's premium. Debtors obviously cannot operate without workers' compensation insurance in place. If Debtors are unable to maintain workers' compensation insurance, they may be subject to statutory or other fines imposed by

state regulators in the 31 states in which they operate. Debtors would have no choice but to immediately terminate their employees, cease operations, and liquidate. Cause therefore exists to reduce notice of this hearing.

17. Given the potential for irreparable harm, Debtors have determined in their business judgment that the continuation of insurance by obtaining a policy in form and substance similar to the ones offered by AIG is in the best interests of their business.

18. Because entering into the insurance contract may constitute a transaction outside the ordinary course of Debtors' business, Debtors seek Court authorization under 11 U.S.C. § 363(b) to enter into the agreement with AIG.

19. In the event that Debtor arranges the overadvance from Capitalsource, Debtors seek approval of any amendment to the Credit Facility pursuant to sections 363 and 364(c) of the Bankruptcy Code. Moreover, Debtors will suffer irreparable harm as noted above if they are unable to secure the financing in time to post the letter of credit. Cause exists for the court to hear the motion on less than 15 days' notice, as permitted under Bankruptcy Rule 4001(c)(2).

20. Debtors continue to negotiate with AIG, Capitalsource, and other parties. Debtors will select one of the options described above or a similar proposal at or before the hearing on this motion. It is possible that Debtors will receive additional insurance proposals from other companies before this Motion is heard. Thus, Debtors reserve the right to alter this Motion until the time of the hearing to obtain insurance on terms available and most advantageous to the estates. **Debtors give notice that they will seek authority to enter into these or other insurance contracts at the hearing.**

21. Pursuant to Local Rule 9013-2(a), this motion is verified, and is accompanied by a memorandum of law, proposed order and proof of service.

22. Pursuant to Local Rule 9013-2(c), Debtor gives notice that it may, if necessary, call Gregory Von Arx, Chief Financial Officer of each of the Debtors, whose business address is 6600 France Avenue South, Suite 510, Edina, MN 55435 to testify about the facts raised in this motion.

WHEREFORE, Debtor moves the Court for an order authorizing it to enter into an insurance contract with AIG or other suitable insurance carrier, authorizing it to obtain an overadvance from Capitalsource Finance, LLC to fund costs of the insurance and for such other relief as the Court deems just and equitable.

Respectfully submitted,

Dated: September 3, 2004

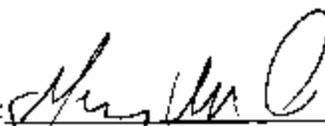
/e/ Clinton E. Cutler
Clinton E. Cutler (#158094)
FREDRIKSON & BYRON, P.A.
200 South Sixth Street
Minneapolis, MN 55402-1425
(612) 492-7000
(612) 492-7077 (Fax)

ATTORNEYS FOR DEBTORS

VERIFICATION

I, Gregory Von Arx, am the Chief Financial Officer of each of the Debtors in the above-captioned cases. Based upon my personal information and belief, I declare under penalty of perjury that the facts set forth in the preceding motion are true and correct, according to the best of my knowledge, information and belief.

Dated: September 3, 2004

Signed: 
Gregory Von Arx

#30112262

AIG RISK MANAGEMENT

Commercial Risk Division
Chicago Region

PROPOSAL of Risk Management Program

Effective 9/14/2004 for 1 Year

For

Intrepid, USA

on behalf of yourself and all your subsidiaries or affiliates,

provided by

American Home Assurance Company

70 Pine Street, New York, NY 10270

on behalf of itself and its affiliates

THIS IS ONLY A SYNOPSIS OF THE PROPOSED PROGRAM.

The full details will be described in the Policies, the Payment Agreement and its Schedule, and if applicable, the Reinsurance Agreement.

Attached to this Proposal are specimen copies of the Payment Agreements and the Schedule defining the Finance Plan applicable to this Program. Please review them carefully.

You must execute and return an original executed copy of both the Payment Agreement and the Schedule to us within 30 days after the Effective Date above or 30 days after the date of the Underwriter's signature hereon, whichever is later.

You must also deliver the specified Collateral to us within 30 days of the inception of the program.

If not so returned and delivered, we may void the Finance Plan summarized herein and set forth in detail in the Payment Agreement. Upon our notice of our voiding of the Finance Plan to you at your address shown above, the entire amount of the "Estimated Total Cost" specified under FINANCE PLAN herein will become immediately due and payable to us in cash at our address shown above. Failure to pay such amount within 10 days thereafter shall entitle us to cancel the insurance and any reinsurance and to terminate all services under this Program by notice to you when not less than 10 days thereafter the cancellation and termination shall become effective.

Signed on behalf of National Union Fire Insurance Company of Pittsburgh Pa and its affiliates by

Underwriting Manager _____, Date: _____

Underwriter _____, Date: _____

Casualty Insurance Proposal

Presented to

Intrepid, USA

and

Hays Companies

Coverages

Workers' Compensation and Employers Liability

9/14/2004

9/14/2005

This quotation is indivisible and expires on 9/14/2004

Submitted by

**AIG Risk Management
Commercial Risk Division**

Introduction

AIG Risk Management – Commercial Risk Division is pleased to offer for your consideration the enclosed primary casualty program quotation for **Intrepid, USA**. We would, at the same time, like to express our thanks to both **Intrepid, USA** and C.F. Lake for giving AIGRM the opportunity to work on your insurance program.

AIG Risk Management – Commercial Risk Division

For more than 20 years, AIG Risk Management has been known in the marketplace as the leading provider of risk management insurance programs, focusing on meeting the needs of large, national accounts. While we have enjoyed much success in this regard, AIGRM is much more than just a marketplace for large accounts; we cater to customers at the upper-end of the middle market as well.

In fact, that is the focus of AIGRM's Commercial Risk Division. We target corporations with nationwide, annual revenues of between \$100 million and \$750 million. Within that target market, we have very few class of business restrictions; no matter what exposures you may face, our dedicated team of underwriters will work with you to design a coverage plan to meet your specific business needs. Available program designs include: guaranteed cost; self-insured retentions; deductibles; incurred and paid loss retros; captive arrangements; and buyouts/loss portfolio transfers. In addition, we can combine and/or coordinate our programs with our other divisions, giving you access to the full breadth of AIG.

This document contains a broad outline of coverage. The policy (or policies) that will be issued to you contain the full and complete agreement with regard to terms, conditions, exclusions and coverage. In the case of any conflict between the insurance policy (or policies), and the provisions contained in this, or any other coverage document, the provisions in the policy (or policies) shall govern. Upon receipt, please review the policy (or policies) thoroughly with your broker, and notify us promptly in writing if you have any questions.

QUALITY SERVICE

But it's more than just underwriting – an insurance program is only as good as the service behind it. To that end, we can offer a variety of specialized services to enhance our insurance programs, including: claims adjusting through AIG Claims Services; IntelliRisk, our on-line claims management system; and AIG Risk Control Consultants – our team of trained, loss control consultants. All these services are aimed at reducing your overall cost of risk.

FINANCIAL STRENGTH

Behind all of AIGRM's people, products and services is the AIG Group, the largest underwriter of commercial and industrial coverages in the United States, with member companies in over 130 countries and jurisdictions worldwide. *AIG holds the highest ratings from each of the principal rating services: Standard & Poor's ("AAA"); Moody's ("Aaa"); and A.M. Best Co. ("A++XV").* These ratings reflect AIG's extremely strong balance sheet, cash flow and widely diversified business base, as well as our management's commitment to profitability and conservative investment principles. Financial strength and long-term stability are important factors when selecting an insurance carrier and we believe these are areas where AIG stands apart from the field.

The AIG Risk Management Team

AIG Risk Management is committed to providing **Intrepid, USA** with superior service on your risk management program, so that we may build a long-term relationship. The AIG professionals who are servicing your account take great pride in providing industry leading products and services to our clients. We attempt to provide consistent, continuously improving seamless process of customer service. The service team has responsibilities, which include delivering a high quality product in a timely fashion. The persons listed below make up the team for your account.

Commercial Risk Division 80 Pine Street

Team	Name	Telephone	FAX
Underwriter	Steven Frey	(312) 930-2162	(312) 930-1432
Risk Analyst	Margaret Melnik	(312) 930-1663	(312) 930-1432
Regional Manager	Michael Poehlmann	(312) 930-2186	(312) 930-1432
Loss Control	Dan Krause	(312) 930-2194	(312) 930-1432
Premium/Loss Billing & Adjustments	Jason Lehman	(908) 679-4051	(908) 679-4310
Claims Coordinator	Kris Sorenson	(312) 930-5488	(312) 648-5590

Policy Issuance

We plan to have your policies delivered to you within a period of 60 days from the day this program is bound, provided that all the information necessary for policy issuance has been received. Policies will be issued in accordance with statutory requirements and insurance company practices. Most policies will be issued by either National Union Fire Insurance Company of Pittsburgh, Pa. or American Home Assurance Company, although it is possible that in special situation policies may be issued by other member companies of American International Group, Inc.

Premium Audit

Premium audits are required in all states for our insurance programs, so AIG has a substantial staff devoted to the professional auditing of our accounts. One of the goals of our audit staff will be to develop timely and accurate unit statistical filings for your Workers' Compensation coverage, which will result in the development of proper experience modifiers for your company. Your cooperation in the premium audit process will make this possible.

Premium Adjustments

We strive to handle all matters involving accounts payable or accounts receivable in a professional manner, with the emphasis placed on accuracy. AIG has a substantial accounting staff which tracks all monetary transactions on your account, and makes sure that you are receiving accurate and timely billing or interest statements.

Claims Administration

We understand that claims administration is a critical concern for our Insureds, as the professional, efficient handling of claims can have a significant impact on your overall insurance costs. Under the proposed insurance program, **Intrepid, USA** claims will be handled by AIG's in-house claims handling unit, AIG Claims Services ("AIGCS"). AIGCS is a leader in the field of primary casualty claims management, with a nationwide network of adjusters capable of handling your claims management needs anywhere across the country. While other companies use generalist adjusters who are expected to manage all aspects of claims, AIGCS employs specialists with expertise in one of several areas, such as Compensability, Disability Management, Early Return to Work, Critical Claims, Investigations or Medical Management. By concentrating the focus of each specialist, AIGCS deepens the expertise that each adjuster can bring to your claims files – and this can translate into savings in your ultimate claims costs.

If at any time you have any questions or concerns regarding our claims handling services, please feel free to either contact AIGCS directly or call our office and we will be happy to provide you with assistance.

Claims Supervision

Professional claims service is an integral part of any risk management program and it is important to us at AIGRM that your claims are handled properly. For this reason we offer you a choice among the best independent claims administrators in the business; those who have passed the scrutiny of the AIGRM Claims Supervision unit and have a track record of successfully servicing diverse industries. Information on the fees charged for claims handling and supervision can be found in the section under Claims Administration.

Loss Control

We believe a sound loss control program is an integral part of any insurance program. As such, AIG has developed a nationwide network of loss control consultants and engineers with expertise in all aspects of safety training and loss prevention. Our consultants are trained to identify, as well as anticipate, potential sources of loss, in order to help lower your overall cost of risk.

Premium Financing

Premium financing is available for our guaranteed cost programs through Imperial A.I. Credit, a member company of American International Group. For further information, please contact: **(630) 395-2500.**

TRIA Disclosure

You are hereby notified that under the federal Terrorism Risk Insurance Act of 2002 (the "Act") effective November 26, 2002, you now have a right to purchase insurance coverage for losses arising out of an Act of Terrorism, which is defined in the Act as an act certified by the Secretary of the Treasury (i) to be an act of terrorism, (ii) to be a violent act or an act that is dangerous to (A) human life; (B) property or (C) infrastructure, (iii) to have resulted in damage within the United States, or outside of the United States in case of an air carrier or vessel or the premises of a U.S. mission and (iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. You should read the Act for a complete description of its coverage. The Secretary's decision to certify or not to certify an event as an Act of Terrorism and thus covered by this law is final and not subject to review. There is a \$100 billion dollar annual cap on all losses resulting from Acts of Terrorism above which no coverage will be provided under this policy and under the Act unless Congress makes some other determination.

For your information, coverage provided under this proposal or binder for losses caused by an Act of Terrorism may be partially reimbursed by the United States under a formula established by the Act. Under this formula the United States pays 90% of terrorism losses covered by this law exceeding a statutorily established deductible that must be met by the insurer, and which deductible is based on a percentage of the insurer's direct earned premiums for the year preceeding the Act of Terrorism.

Program Terms & Conditions:

1. "Special Tax and Assessment Charges" are additional charges levied by various states in which the Insured conducts its operations. These charges are not considered premium, but rather are charged in addition to premium and represent a separate component of your overall insurance cost.
2. It is a condition precedent to the inception of any policy hereunder that the premium quoted herein be received by AIG prior to the inception date of the policy (9/14/2004). If the premium is not received by the AIG in advance, no policy will incept or be issued. Special Taxes & Assessments are all due up-front as well.
3. Program is written for a one-year term. All coverages provided are outlined in coverage exhibits; these may differ from those requested.
4. **This quotation is indivisible and expires at 12:01 a.m. on 9/14/2004**
5. Subject to Large Risk Rating Plan Endorsement.
6. Adjustment Schedule (if applicable)
 - First Adjustment: Six Months After Expiration
 - Last Adjustment: When all claims are closed

This quote [or binder] is contingent upon:

the United States Bankruptcy Court for the District of Minnesota approving the Insurance Program with Intrepid U.S.A., Inc. for the policy year commencing on September 14, 2004 and ending on September 14, 2005, pursuant to an order satisfactory to American International Companies on or before October 29, 2004.

You agree that failure to obtain this approval on or before October 29, 2004 is grounds for cancellation of the Insurance Program policies.

It is a condition precedent to the inception of any policy hereunder that the premium (and security, if applicable) quoted herein be received by American International Companies prior to the inception date of the policy. No extensions of time may be given except in writing by American International Companies. If the premium (and security) are not received by American International Companies in advance no policy will incept or be issued.

Coverage Specifications
(\$500,000 Deductible Option)

Coverage: Workers' Compensation – 9/14/2004 to 9/14/2005

All Policies have a term of one year effective 9/14/2004 and will be issued in accordance with statutory requirements and insurance company practices. Exposures in Canada and U.S. Territories are underwritten separately and are written on separate policies. No coverage is currently available in the Virgin Islands. Coverages listed below apply only to the United States.

Limits: Workers' Compensation: Statutory
Employers' Liability: \$ 500,000 Each Accident
\$ 500,000 By Disease: Each Employee
\$ 500,000 By Disease: Policy Limit

Deductible: \$500,000 per occurrence
Deductible Aggregate: \$8,000,000 Adjustable upwards only at a rate of 8.523 (per \$100 of Payroll).

ALAE Option C – 100% (see Treatment of Allocated Loss Adjustment Expenses)

Security (LOC): \$3,806,400

WC Premium:	\$1,571,928	Payroll at inception:	\$93,820,465
TRIA (included):	\$36,849	Minimum due (at inception):	\$1,571,928 + LOC
Surcharges*:	\$93,489	Adjustable on:	1.675/\$100 of payroll

Endorsements:

1. Foreign Voluntary Compensation – 60904 (8-94)
2. Executive Officers, Partner and Sole Proprietors are Covered – WC 00 03 10 (4-84)
3. Unintentional Errors & Omissions – WC 99 00 11A (10-03)
4. Amendment of Your Duties if Injury Occurs – WC 99 00 08A (10-03)
5. Waiver of Subrogation – WC 00 03 13 (4-84)

All Endorsements to be issued using either AIG-approved or NCCI-approved wording.

*Surcharges are estimated and subject to change and are in addition to the premium.

BINDER:

To bind the above Workers' Compensation coverage quotation, please have an authorized representative sign below, and fax back to:

Steven Frey -- Fax: (312) 559-1432

Broker Signature

Underwriting Manager Signature

Underwriter Signature

Coverage Specifications
(Guaranteed Cost Option)

Coverage: Workers' Compensation – 9/14/2004 to 9/14/2005

All Policies have a term of one year effective 9/14/2004 and will be issued in accordance with statutory requirements and insurance company practices. Exposures in Canada and U.S. Territories are underwritten separately and are written on separate policies. No coverage is currently available in the Virgin Islands. Coverages listed below apply only to the United States.

Limits:	Workers' Compensation:	Statutory
	Employers' Liability:	\$ 500,000 Each Accident
		\$ 500,000 By Disease: Each Employee
		\$ 500,000 By Disease: Policy Limit

Guaranteed Cost Policy

ALAE Option: N/A

WC Premium:	\$4,673,820	Payroll at inception:	\$93,820,465
TRIA (included):	\$36,849	Minimum due (at inception):	\$4,673,820
Surcharges*:	\$110,455	Adjustable on:	4.982/\$100 of payroll

Endorsements:

1. Foreign Voluntary Compensation – 60904 (8-94)
2. Executive Officers, Partner and Sole Proprietors are Covered – WC 00 03 10 (4-84)
3. Unintentional Errors & Omissions – WC 99 00 11A (10-03)
4. Amendment of Your Duties if Injury Occurs – WC 99 00 08A (10-03)
5. Waiver of Subrogation – WC 00 03 13 (4-84)

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Steven Frey – Fax: (312) 559-1432

Broker Signature

Underwriting Manager Signature

Underwriter Signature

Treatment of Allocated Loss Adjustment Expenses

Allocated Loss Adjustment Expenses or *ALAE* means all court costs and court expenses; pre- and post-judgment interest; fees for service of process; attorneys' fees; cost of undercover operative and detective services, costs of employing experts; costs for legal transcripts; costs for copies of any public records; costs of depositions and court-reported or recorded statements; costs and expenses of subrogation; and any similar fee, cost or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a loss or a claim or suit against you, or to the protection and perfection of your or our subrogation rights.

"*ALAE*" shall not include:

1. Fees payable to the Claims Service Provider as set forth in its fee schedules payable by us, nor;
2. the salary, employee benefits, or overhead of any of our employees, nor
3. the fees of any attorney who is our employee or under our permanent retainer; nor
4. the fees of any attorney we retain to provide counsel to us about our obligations, if any, under any policy issued by us or our affiliated company(ies), with respect to a claim or suit against you.

Allocated Loss Adjustment Expenses included as a Reimbursable Amount or Subject Loss

Option A: All or a part of all *ALAE* such that the total Reimbursable Amount or Subject Loss will not exceed the applicable Deductible or Loss Limit.

Option B: 100% of all *ALAE*.

Option C: All or a part of *ALAE* calculated according to the following formula:

- a) If we have NO obligation under the Policies to pay damages, benefits or indemnity, all *ALAE* up to the applicable Deductible or Loss Limit and 100% of all *ALAE* in excess thereof; or
- b) If our obligation to pay damages, benefits or indemnity under the Policies exceeds zero (\$0), all *ALAE times* the amount of our obligation to pay damages, benefits or indemnity up to the applicable Deductible or Loss Limit, *divided by* the total amount of our obligation to pay damages, benefits or indemnity.

Option D: NONE of the *ALAE*.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

**DEBTORS' MEMORANDUM IN SUPPORT OF MOTION FOR EXPEDITED
HEARING AND FOR ORDER AUTHORIZING DEBTORS TO PURCHASE
WORKER'S COMPENSATION INSURANCE COVERAGE AND TO
OBTAIN SECURED CREDIT FROM CAPITALSOURCE FINANCE, INC.**

INTRODUCTION

Intrepid U.S.A., Inc. and the affiliated Debtors referenced above (collectively, "Debtors"), submits this memorandum in support of its Motion for Expedited Hearing and for Order Authorizing Debtors to Purchase Worker's Compensation Insurance Coverage and to Obtain Secured Credit from Capitalsource Finance, LLC. The facts are drawn from and verified in the motion. Because the proposed insurance is in the best interests of the estates, Debtors respectfully request that the Court enter an order granting the relief requested in the motion. Moreover, the Court should authorize Debtors to obtain secured credit from Capitalsource to pay for the costs of insurance.

ANALYSIS

Bankruptcy Rule 9006(a) allows an expedited hearing upon a showing of cause to reduce notice of the hearing on this motion. Bankruptcy Rule 4001(c)(2) permits the court to authorize debtors in possession to obtain secured credit on less than 15 days' notice to avoid immediate and irreparable harm. There is cause here to reduce notice of hearing because the insurance must be in place by September 14, 2004, when Debtors' current insurance expires. In addition, to

obtain the insurance, Debtors may need an overadvance from Capitalsource. As stated in the motion, Debtors have sought insurance for many weeks. It was not until recently that AIG Risk Management made the proposal outlined in the motion. Given the immediate need for insurance coverage, an expedited hearing is appropriate.

Bankruptcy Code section 363(b)(1) requires court approval, after notice and hearing, for the use of estate property outside of the ordinary course of business. 11 U.S.C. § 363(b)(1). In interpreting section 363(b)(1), courts have held that a transaction involving property of the estate generally should be approved so long as the debtor demonstrates “some articulated business justification for using, selling, or leasing property outside of the ordinary course of business.” In re Continental Airlines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986).

The proposed insurance contract is supported by sound business justifications. Debtors require worker’s compensation insurance to continue operations, and given the large size of the Debtors, their lines of business, number of employees, and the pending bankruptcy cases, few insurance companies are willing to provide insurance. Under the circumstances, the insurance proposals provided by AIG Risk Management are the most advantageous to Debtors. Moreover, given the alternative, Debtors have determined that securing worker’s compensation insurance through AIG greatly benefits the estates. Therefore, the Court should authorize the Debtors to purchase worker’s compensation insurance pursuant to Code section 363(b).

As described in the motion, the large deductible option offered by AIG is the most economical and advantageous to Debtors. The drawback is that Debtors do not have sufficient cash or borrowing capacity available to post the required letter of credit of \$3.8 million, unless they obtain an overadvance from Capitalsource on the post-petition Credit Facility. Debtors are negotiating for such an overadvance. If one is obtained, the Credit Facility will be amended.

Debtors are unable to secure letters of credit on an unsecured basis and AIG will not provide insurance under such a policy without the letters of credit. Therefore, pursuant to Code § 364(c) the Court should authorize Debtor to enter into the amendment and borrow to obtain the funds needed to post the letter of credit.

CONCLUSION

Because the proposed insurance contract is in the best interests of the estates, Debtors respectfully request that the Court enter an order granting the relief requested in the motion.

Respectfully submitted,

Dated: September 3, 2004

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#3012879

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

**ORDER FOR EXPEDITED HEARING AND AUTHORIZING DEBTORS
TO ENTER INTO INSURANCE CONTRACT WITH AIG**

The hearing on motion of Debtors Intrepid U.S.A., Inc. (the “Debtors”) for an order authorizing them to enter into an insurance contract (the “Contract”) with AIG Risk Management (“AIG”) came before the undersigned on September 9, 2004. Appearances, if any, are noted in the record.

Based on the motion, the arguments of counsel, all the files, records and proceedings herein, the court’s being advised in the premises, and the court’s findings of fact and conclusions of law, if any, having been stated orally and recorded in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. Debtor’s Motion for expedited hearing is granted.
2. Debtor is hereby authorized but not required, pursuant to 11 U.S.C. § 363(b) to enter into workers’ compensation insurance contract with AIG Risk Management or its affiliate, on substantially the terms and conditions set forth in the Debtors’ Motion.

BY THE COURT:

Dated: September ____, 2004

The Honorable Nancy C. Dreher
United States Bankruptcy Judge