

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

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In re: : Case No. 12-11882 (KJC)  
: :  
CINRAM INTERNATIONAL INC., *et al.*, : Chapter 15  
: :  
Debtors in a Foreign Proceeding. : Jointly Administered  
: :  
: **Hearing Date: July 25, 2012 at 10:00 a.m.**  
: **(Prevailing Eastern Time)**  
: :  
: **Objection Deadline: July 20, 2012 at 4:00**  
: **p.m. (Prevailing Eastern Time)**  
: :  
: **Related to Docket Nos. 9 & 50**  
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**OBJECTION AND RESERVATION OF RIGHTS OF  
RODENBURY INVESTMENTS LIMITED TO  
ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASE**

Rodenbury Investments Limited (“Rodenbury”), by and through its undersigned counsel, hereby submits this objection (the “Objection”) and respectfully states as follows:

1. On June 25, 2012, Cinram International ULC, in its capacity as the authorized foreign representative for the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed the *Foreign Representative’s Motion for Entry of an Order (I) Recognizing the Canadian Sale Order, (II) Authorizing and Approving the Sale Free and Clear of Liens, Claims Encumbrances, and Other Interests, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 9] in this Court.

**Background**

2. Rodenbury and Cinram International Inc. (“Cinram”) are parties to that certain Industrial Lease – Single Tenancy dated as of October 31, 2008 (the “Lease”). Pursuant

to the Lease, Rodenbury leases real property located at 5590 Finch Avenue in Toronto, Ontario to Cinram. The Lease term runs until October 30, 2018.

3. Pursuant to the Lease, Cinram agreed to perform, at its sole cost and expense capital repairs and replacement work on the real-property (the “Post-Closing Work”). As security for the performance of the Post-Closing Work, Cinram deposited \$1,800,000 (Canadian) pursuant to an Escrow Agreement dated October 31, 2008 between Cinram, Rodenbury and Fogler, Rubinoff LLP, as Escrow Agent (the “Escrow Agreement”).<sup>1</sup> The Escrow Agreement provides for the return of funds in escrow to Cinram upon the satisfactory completion of the Post-Closing Work. The Escrow Agreement further provides that if Cinram does not complete the Post-Closing Work, Rodenbury shall be entitled to complete the Post-Closing work that remains uncompleted and receive payment from the funds in escrow in an amount equal to the costs incurred in connection therewith. As of the date hereof, Cinram has completed a portion of the Post-Closing Work. Thus, \$545,808.86 (Canadian) remains in the escrow account. This amount is comprised of \$506,770.08 (Canadian) of the initial deposit and \$39,038.78 (Canadian) in interest.

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<sup>1</sup> A copy of the Lease and the Escrow Agreement will be made available upon request.

## Objection

4. By notice dated July 6, 2012, Rodenbury was informed that the Lease may be assumed by Cinram and assigned to the purchaser of the Debtors' assets (the "Assumption Notice"). The Assumption Notice identified a cure amount associated with the Lease in the amount of \$0 (the "Cure Amount"). The Assumption Notice further provided that the Debtors will file a final list of contracts that are "actually assumed and assigned to the Purchaser at closing with the Bankruptcy Court within one business day after the closing of the Sale." However, pursuant to the terms of the Asset Purchase Agreement dated as of June 22, 2012 between Cinram and Cinram Acquisition, Inc., (the "APA") the process of identifying executory contracts and unexpired leases for assumption and assignment may not be completed until September 15, 2012 (the "Designation Period").

5. Rodenbury objects to the Cure Amount and respectfully requests that the *Order (I) Recognizing the Canadian Sale Order, (II) Authorizing and Approving the Sale Free and Clear of Liens, Claims Encumbrances, and Other Interests, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (the "Order") be modified to include the language set forth on "**Exhibit A**" hereto.

6. Although, at this time Rodenbury is unaware of any monetary defaults under the Lease, because the Lease is a triple net lease, Cinram is responsible for expenses under the Lease in addition to rent payments and performance of the Post-Closing Work. Thus, there may be obligations due and owing by Cinram that have not yet been billed to Cinram. As a result, Rodenbury hereby reserves its right to assert all claims and rights it has under all leases, contracts and/or agreements with the Debtors and their affiliates, parents or subsidiaries, including without limitation all claims for cure amounts, lease rejection damages, guaranties,

postpetition rent, common area maintenance, taxes, insurance, insurance proceeds, year-end adjustments and reconciliations, true-ups, attorney fees, indemnification, contribution, set-off, recoupment, costs associated with abandoned property left at the premises, including without limitation removal and disposal thereof, any repairs necessitated by such removal and disposal, and any third-party claims related thereto, costs associated with mechanics liens and any third-party claims related thereto, and all other amounts, obligations or rights that are due or become due under such leases, contracts and/or agreements, including any claims that are unknown to the Rodenbury as of the date of the filing of this Objection that become known after the filing of this Objection, and, in the case of a lease or executory contract that is assigned, any claims that relate to the pre-assignment period that become known after the assignment (in addition to any cure amounts).

7. Additionally, Rodenbury seeks modification of the Order to reflect the Debtors' agreement that Rodenbury's rights under the Escrow Agreement will continue in the event that Cinram or its assign does not timely complete the Post-Closing Work.

8. Finally, Rodenbury objects to the Designation Period and requests that final notice of the Debtors' intention to assume or reject the Lease be provided to Rodenbury no later than five (5) business days prior to the closing of the APA. Rodenbury further requests that the Order be modified to explicitly state that the Debtors will comply with Section 365(d)(3) of the Bankruptcy Code and timely perform all obligations under the Lease until the Lease is assumed or rejected.

WHEREFORE, Rodenbury respectfully requests that this Court: (a) modify the Order as set forth on “**Exhibit A**” hereto; and (b) grant such other further relief as this Court deems just and proper. Rodenbury reserves the right to amend, modify, supplement or withdraw this Objection.

Dated: July 20, 2012  
Wilmington, Delaware

**ASHBY & GEDDES, P.A.**

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*Attorneys for Rodenbury Investments Limited*

## Exhibit A

1. The right of Rodenbury Investments Limited to assert all claims and rights it has under all leases, contracts and/or agreements with the Debtors and their affiliates, parents or subsidiaries, including without limitation all claims for cure amounts, lease rejection damages, guaranties, postpetition rent, common area maintenance, taxes, insurance, insurance proceeds, year-end adjustments and reconciliations, true-ups, attorney fees, indemnification, contribution, set-off, recoupment, costs associated with abandoned property left at the premises, including without limitation removal and disposal thereof, any repairs necessitated by such removal and disposal, and any third-party claims related thereto, costs associated with mechanics liens and any third-party claims related thereto, and all other amounts, obligations or rights that are due or become due under such leases, contracts and/or agreements, including any claims that are unknown to the Rodenbury as of the date of the filing of this Order that become known after the entry of this Order, and, in the case of a lease or executory contract that is assigned, any claims that relate to the pre-assignment period that become known after the assignment (in addition to any cure amounts) is hereby reserved.

2. The Escrow Agreement dated as of October 31, 2008 Cinram International Inc, Rodenbury Investments Limited and Fogler, Rubinoff LLP, as Escrow Agent (the “Escrow Agreement”) shall remain in full force and effect. The automatic stay under Section 362 of the Bankruptcy Code or any similar stay in effect in Canada is hereby lifted for the sole purpose of allowing Rodenbury Investments Limited to exercise its rights and remedies under the Escrow Agreement.

3. The Debtors shall comply with Section 365(d)(3) of the Bankruptcy Code with respect to that certain Industrial Lease – Single Tenancy dated as of October 31, 2008 between Cinram International Inc. and Rodenbury Investments Limited.

**CERTIFICATE OF SERVICE**

I, Karen B. Skomorucha Owens, hereby certify that, on July 20, 2012, I caused one copy of the foregoing pleading to be served upon the parties detailed on the attached service list in the manner indicated.

*Ka B. Owens*

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