

CANADA

SUPERIOR COURT

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

Commercial Division
(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
1985, c. C-36)

No: 500-11-042345-120

IN THE MATTER OF THE PROPOSED PLAN OF
COMPROMISE AND ARRANGEMENT OF:

AVEOS FLEET PERFORMANCE INC./
AVEOS PERFORMANCE AÉRONAUTIQUE INC.
and
AERO TECHNICAL US, INC.

Insolvent Debtors/Petitioners

and

FTI CONSULTING CANADA INC.

Monitor

and

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS (IAMAW), having a
place of business at 2580 Drew Road, Suite 203,
Mississauga, Ontario, L4T 3M5

Respondent

and

THE ATTORNEY GENERAL OF CANADA,
Complexe Guy Favreau, 200 René-Lévesque
Boulevard West, East Tower, 5th Floor ,
Montreal, Quebec, H2Z 1X4

Respondent

MOTION FOR DIRECTIONS AND AUTHORIZATIONS PERTAINING TO THE PAYMENT OF CERTAIN
SUMS TO EMPLOYEES

(Sections 6(5), 11 and 36(7) of the *Companies' Creditors Arrangement Act* ("CCAA"))

TO THE HONOURABLE JUSTICE MARK SCHRAGER J.S.C., SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. On March 19, 2012, the Petitioners filed a *Petition for an Initial Order* pursuant to the CCAA (the “**Initial CCAA Petition**”), as appears from the Court record herein. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Initial CCAA Petition.
2. On the same day, this Court issued an Initial Order which was amended and restated by order of the Court dated March 30, 2012 (collectively the “**Initial Order**”) in respect of the Petitioners, as appears from the Court record herein.
3. As stated in the Initial CCAA Petition, the Petitioners sought a specific order in respect of the payment of outstanding wages, salaries, employee benefits, vacation pay and expenses payable prior to or at the date of the Initial Order (herein collectively referred to as the “**Employee Payments**”), as appears from the Court record herein.
4. The Initial Order indeed provides that the Petitioners are entitled but not required to pay such Employee Payments, subject to certain terms and conditions, as appears namely from paragraph 16(a) of the Initial Order.
5. On March 20, 2012, the Petitioners filed a *Motion for the Appointment of a Chief Restructuring Officer* (the “**CRO Motion**”) in view of having this Honourable Court appoint a Chief Restructuring Officer (“**CRO**”) with authority to carry on, manage, operate and supervise the management and operations of the business and affairs of the Petitioners, subject to certain terms and conditions, as appears from the Court record herein.
6. On the same day, this Honourable Court granted in part the said CRO Motion and appointed a Chief Restructuring Officer over the Petitioners, subject to the terms and conditions contained in the *Order for the appointment of a Chief Restructuring Officer* rendered by the Honourable Mark Schragar, J.S.C. (the “**CRO Order**”).
7. Other than a small number of employees who have been retained by the Petitioners to assist with the remaining operations of the Petitioners, the employment of substantially all employees of the Petitioners was terminated shortly before or shortly after the date of the Initial Order.
8. The Petitioners’ insolvency, the necessary filing of the Initial CCAA Petition, and the ensuing issuance of the Initial Order have therefore inevitably, unwillingly and unfortunately engendered adverse consequences for the approximately 2665 individuals previously employed by the Petitioners. As of the date of the Initial Order,

approximately Five Million Eight Hundred Thousand Dollars (\$5,800,000) in accrued and unpaid wages were owing to such former employees. This amount is comprised of base wages only and does not include vacation pay or any other obligations owing to the former employees.

9. By this Motion, the Petitioners seek to have this Court use the broad powers it is entrusted with by the CCAA to allow a practical business solution to complex issues by the issuance of an Order directing the Petitioners and authorizing them, under certain conditions, to make certain Employee Payments as set out below. These Employee Payments would alleviate some of the aforementioned adverse financial situation faced by the Petitioners' former employees if such payments were to be paid at the times otherwise contemplated by the CCAA.

II. PETITIONERS' PRE-FILING OBLIGATIONS AND THE AUTHORIZATION SOUGHT

10. As noted, prior to the filing of the Initial CCAA Petition and the issuance of the Initial Order, the Petitioners had accrued unpaid wage obligations estimated in the amount of approximately \$5,800,000, excluding employer payroll contributions thereon estimated at an additional Four Hundred and Fifty Thousand Dollars (\$450,000).
11. Despite not being obliged to do so under the Initial Order, the Petitioners wish to disburse the accrued and unpaid wages as Employee Payments, plus the mandatory employer payroll contribution thereon, as authorized by the Initial Order, subject to the authorization, conditions and modalities requested herein;
12. In the present circumstances, it is anticipated that the Petitioners will either present a Plan of Compromise and Arrangement (a "Plan") to the Court for sanction pursuant to the CCAA or will seek approval from the Court of a sale of assets (a "Sale");
13. Should a Plan be ultimately sanctioned by this Court, or approval of the Court sought in respect of a Sale, the former employees would be entitled to be paid, pursuant to subsection 6(5) or subsection 36(7) of the CCAA, amounts at least equal to the amounts that they would have been qualified to receive under subsection 136(1)(d) and section 81.3 or 81.4 of the *Bankruptcy and Insolvency Act* (the "BIA"), if the Petitioners had become bankrupt or subject to a receivership on the day on which proceedings commenced under the CCAA, namely the amount owing that is subject to the priority contemplated at sections 81.3 and 81.4 of the BIA, up to the maximum amount of Two Thousand Dollars (\$2,000) per former employee;
14. Alternatively, the Petitioners might ultimately be placed into receivership or declared bankrupt. In the event of a receivership or bankruptcy, the former employees would be entitled to a priority charge in respect of their accrued and unpaid wages under the BIA, as noted above, to a maximum of \$2,000 each, and the application of, *inter alia*, the *Wage Earner Protection Program Act* (S.C. 2005, c. 47, s. 1) (the "WEPPA") would be triggered;

15. Should the Petitioners be placed into receivership or declared bankrupt, each of the Petitioners' former employees would be entitled, pursuant to Section 7(b) of the WEPPA, to a payment by the federal government of approximately Three Thousand Five Hundred and Thirty Dollars \$3,530 (*sauf à parfaire*), being the amount equal to four times the maximum weekly insurable earnings of \$882.70 for 2012 under the *Employment Insurance Act*, less any amounts received on account of such accrued wages from the receiver or trustee;
16. There are approximately 2665 former employees of the Petitioners that would be subject to the aforementioned provision. At the rate of \$2,000 per employee, the maximum amount that would be payable on the sanctioning of a Plan or the approval by the Court of a Sale, would be approximately Five Million Three Hundred and Thirty Three Thousand Dollars (\$5,333,000). However, many employees are owed less than \$2,000 for unpaid wages. As a result, the total amount of unpaid wages that would constitute a priority claim under the BIA, and therefore payable under section 6(5) and 36(7) of the CCAA is approximately Four Million Nine Hundred and Forty Thousand Dollars (\$4,940,000). Of the total unpaid wages outstanding of \$5,800,000, the balance of \$860,000 represents unpaid wages owing in excess of the \$2,000 cap to certain employees that would not have priority status under the CCAA or the BIA but would nevertheless be paid under the proposed order;
17. The nature of the current proceedings is such that a Plan and/or a Sale will not be completed immediately, and as such, there will be a delay in former employees receiving payment in accordance with the provisions of the CCAA in the normal course;
18. The Petitioners, in consultation with the Third Party Secured Lenders and the Monitor, have considered the potential hardship that such circumstances may impose upon the Petitioners' former employees, and the desire of these former employees to receive payment of the amount of their outstanding wages prior to the timelines provided for in the CCAA;
19. As such, subject to the conditions and modalities set out herein, the Petitioners hereby respectfully request this Court's direction and order to disburse the sum of approximately \$5,800,000 to their former employees in respect of the Employee Payments, representing the entire amount of accrued and unpaid wages outstanding to the Petitioners' former employees (the "**Proposed Payments**"), notwithstanding that only \$4,940,000 of that amount would be the subject matter of a priority claim by former employees under the BIA or subsections 6(5) and 36(7) of the CCAA.
20. As the Proposed Payments to former employees are intended to be made in lieu and in place of the obligations under subsections 6(5) and 36(7) of the CCAA, the Petitioners furthermore respectfully request that the said disbursement be deemed to be on account of the former employees' entitlements under the WEPPA or the CCAA, as the case may be, to the extent of the amounts actually paid to each former employee to a

maximum of \$2000 per former employee, the whole pursuant to the following conditions and modalities;

21. Indeed, it is respectfully requested that the Proposed Payments to be made by Petitioners to their former employees be deemed, for each employee, to the extent of the amount received by such former employee up to a maximum of \$2000 per former employee, as the full and final payment due and to be owed by Petitioners or by any other person legally bound to make such payments pursuant to subsections 6(5) and 36(7) of the CCAA and subsections 81.3, 81.4 and 136(1)(d) of the *BIA*, in the event that a Plan is ultimately sanctioned, a Sale is approved by the Court or the Petitioners are placed into receivership or bankruptcy;
22. It is also respectfully requested, in contemplation of a receivership or bankruptcy eventuality, that this Court declare and order that:
 - a) the Proposed Payments to be made to each former employee shall be deemed to have fully and validly discharged the former employees' priority contemplated at subsections 6(5) and 36(7) of the CCAA and sections 81.3 and 81.4 and 136(1)(d) of the *BIA*, to the extent of such Proposed Payment to a maximum of \$2,000 per former employee;
 - b) the Proposed Payments be applied in reduction of those that would be potentially owed by the federal government under the WEPPA, should the applicability of such legislation be ultimately triggered, and that any amounts owed thereunder be reduced by the Proposed Payments up to a maximum of \$2,000 per former employee;

such that no further priority claims can be asserted by former employees against the Petitioners to the extent of the amount paid to each former employee in accordance with the order requested;

23. In addition to the accrued wages that are outstanding, after the Proposed Payments, there will remain outstanding and owing to former employees amounts accumulated on account of vacation pay, as well as amounts owing in respect of severance and termination pay. Almost all former employees would therefore remain entitled to assert a claim under the WEPPA for up to the difference between \$3,530 and the \$2,000 entitled to priority status under subsections 6(5) and 36(7) of the CCAA and subsections 81.3 and 81.4 of the *BIA*;
24. The Proposed Payments and the modalities requested by Petitioners, if granted, will not affect the right of the former employees to claim the difference between that which they will have received pursuant to the order to be rendered herein and that which they would be entitled to receive under the WEPPA, if applicable;

25. As noted above, some former employees are owed less than \$2,000 each in respect of their unpaid wages. Their entitlement to claim priority for any additional amounts which may be owing to them up to the difference between what they receive pursuant to the order to be rendered herein and \$2000 are not affected by the proposed Order. The total estimated amount of these claims is approximately \$393,000
26. While Petitioners recognize the hardship caused to the former employees by the delay under the CCAA, Petitioners also understand that the Proposed Payments could materially adversely affect the Third Party Secured Lenders' priority lien rights. Such prejudice would arise if, after the Proposed Payments are made voluntarily by the Petitioners on an expedited basis to employees on account of their priority claims under the CCAA and BIA, employees subsequently assert the same priority for the balance of any amounts owing once approval of a Sale or sanctioning of a Plan is sought or in a subsequent receivership or bankruptcy of the Petitioners. The order sought from the Court herein is intended to protect the Third Party Secured Lenders against such an eventuality by ensuring such former employees do not seek to obtain priority over the Third Party Secured Lenders of additional amounts in excess of the \$2000 maximum amount to which such former employees are entitled under the BIA and CCAA;
27. From a practical point of view, the order sought herein accelerates the benefits which are available to former employees upon the sanctioning of a Plan or the approval of a Sale, without having to wait for a Plan or a Sale, in a manner which ensures that other stakeholders with priority claims such as the Third Party Secured Lenders are not prejudiced by subsequent, duplicative priority claims by former employees;
28. The Petitioners included in the Proposed Payments an amount of approximately \$10,000 payable to 7 former U.S. employees; even if they would not benefit from the WEPPA protection, these U.S. former employees should receive the same treatment under the current proceedings:
29. It is respectfully submitted that the Court's directions and authorizations requested herein are consistent with the effect and spirit of the CCAA, the BIA, the WEPPA, and the terms and spirit of the Initial Order issued by this Honourable Court. The proposed limitations are consistent with the provisions of section 81.3 and 81.4 of the BIA, which provides that the priority claim of an employee for unpaid wages is subject to any amounts actually paid to that employee in respect of those services by a bankruptcy trustee or a receiver, and section 6 of the WEPPA (and corresponding section 7 of the *Wage Earner Protection Program Regulations*), which provide that any amounts payable under the WEPPA are to be reduced by those amounts paid to an employee by a trustee or receiver subsequent to the bankruptcy or receivership;
30. Indeed, the modalities and declarations sought herein will serve to immediately alleviate some of the adverse financial consequences of the Petitioners' insolvency as it affected their former employees, and will not reduce or compromise in any way the

rights granted to said former employees by virtue of the applicable legislation mentioned herein;

31. By proceeding as is respectfully requested herein, the Petitioners seek to ensure that their former employees receive, as soon as possible, as much as those amounts to which they would be eventually entitled, yet without subjecting the former employees to the delays inherent to the process currently being overseen by this Court, and without withdrawing or otherwise limiting any of the former employees' pecuniary rights;
32. The Petitioners respectfully submit that this Motion should be granted in accordance with its conclusions.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

- [1] **GRANT** the present Motion;
- [2] **DECLARE** that all capitalized terms not otherwise defined in the present Petition shall have the meaning ascribed to them in the Initial Order dated March 19, 2012, granted by the Honourable Mark Schragger, J.S.C., in the present matter.
- [3] **DECLARE** that the time for service of the present Motion is abridged to the time actually given and service of the Motion and supporting material is good, valid and sufficient, and the service thereof is hereby dispensed with;
- [4] **ORDER** the Petitioners to pay to their former employees all accrued and unpaid wages in the aggregate and total sum of approximately \$5,800,000, and employer payroll contributions thereon estimated at an additional Four Hundred and Fifty Thousand Dollars (\$450,000), which payments will be subject to the following terms, conditions and modalities;
- [5] **ORDER AND DECLARE** that to the extent of a maximum of \$2,000 per former employee, the payments to be made to each former employee of the Petitioners pursuant to the order to be rendered herein shall be deemed to constitute the full and final payment due and payable by the Petitioners or by any other person legally bound to make such payments to their former employees pursuant to subsection 6(5) and subsection 36(7) of the CCAA, such that no further priority claims can be asserted by former employees against the Petitioners to the extent of the amount paid to each former employee pursuant to this Order;
- [6] **ORDER AND DECLARE** that to the extent of a maximum of \$2,000 per former employee, the payments to be made to each former employee of the Petitioners pursuant to the order to be rendered herein shall be deemed as a payment for the purposes of the priorities contemplated at section 81.3 and 81.4 of the BIA, such that said priorities will be deemed to have been discharged in the event a bankruptcy or receivership of the Petitioners, such that no further priority claims

can be asserted by former employees against the Petitioners or by any other person legally bound to make such payments to the extent of the amount paid to each former employee pursuant to this Order;

- [7] **ORDER AND DECLARE** that the Proposed Payments to be made to each former employee pursuant to the order to be rendered herein shall be accounted for and applied, up to the extent of a maximum of \$2,000 per former employee, in reduction of the amounts to be owed and payable to such former employees having been so paid pursuant to the WEPPA, such that no further amounts may be claimed under the WEPPA to the extent of the amount paid to each former employee, up to a maximum amount of \$2,000 for each former employee, pursuant to this Order;
- [8] **ORDER AND DECLARE** that the amounts owing and payable to each former employee pursuant to the WEPPA shall be deemed to be satisfied to the extent of the amounts received pursuant to the order to be rendered herein, up to a maximum amount of \$2,000 per former employee;
- [9] **ORDER AND DECLARE** that the payments to be made pursuant to the order to be rendered herein will not affect any former employee's rights to claim and collect the difference between that which said former employee will receive pursuant to the order to be rendered herein, up to an amount \$2,000, and the balance to which they may be entitled under the WEPPA;
- [10] **ORDER AND DECLARE** that in the event that former employees become entitled to assert claims under the WEPPA as a result of a receivership or bankruptcy of the Petitioners, the Attorney General of Canada and any other Person will not be subrogated in any claims against the Property of the Petitioners for payments made to former employees under the WEPPA in respect of any former employee who receives payment in accordance with this proposed order up to maximum of \$2000, provided however, that the Attorney General of Canada and any other Person will remain subrogated to any priority claims of former employees remaining after payment of the Proposed Payments, to the extent that such former employees have not exhausted the maximum \$2,000 limit of priority in respect of their claims after application of the payments received pursuant to this order;
- [11] **DECLARE** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioners and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioners, (iii) any receivership of the Petitioners, and (iv) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Petitioners pursuant to the order to be rendered herein, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances

or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

- [12] **DECLARES** that payments to be made pursuant to the order to be rendered herein shall be valid and enforceable and have full effect as to the priorities applicable as against all Property of the Petitioners and opposable to all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners and the Attorney General of Canada, for all purposes.
- [13] **THE WHOLE WITHOUT COSTS** save and except in the event of a contestation, in which case, with costs against the contesting party.

Montréal, April 2, 2012




FRASER MILNER CASGRAIN LLP
Attorneys for Petitioners

AFFIDAVIT

I, the undersigned, **JONATHAN SOLURSH**, Chief Restructuring Officer of the Petitioners in the present matter, domiciled, for the purposes hereof, at BANS, 2311 Blvd. Alfred Nobel, in the City of Montreal, Province of Quebec, do solemnly declare:

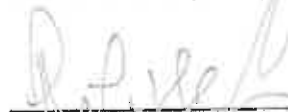
1. I am the Chief Restructuring Officer of the Petitioners in the present matter;
2. All of the facts alleged in the present Motion are true.

AND I HAVE SIGNED:



JONATHAN SOLURSH

SOLEMNLY DECLARED before me at Montreal,
this second day of April 2012



**COMMISSIONNER OF OATHS FOR THE
PROVINCE OF QUÉBEC**



NOTICE OF PRESENTATION

TO: SERVICE LIST

TO: THE ATTORNEY GENERAL OF CANADA,
Complexe Guy Favreau,
200 René-Lévesque Boulevard West, East Tower,
5th Floor
Montreal (Quebec) H2Z 1X4

TO: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (IAMAW),

TAKE NOTICE that the *Motion for Directions and Authorizations Pertaining to the payment of Certain Sums to Employees will* be presented before the Honourable Mark Schrager, of the Superior Court, sitting in the Commercial Division, at the Montréal Courthouse, situated at 1, Notre-Dame Street East, Montréal in a **room to be determined on April 5, 2012** at 9h30 a.m., or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, April 2, 2012

A handwritten signature in blue ink, appearing to read "Fraser Milner Casgrain LLP", is written over a horizontal line.

FRASER MILNER CASGRAIN LLP

Attorneys for Petitioners

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

No. 500-11-042345-120

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED:

AVEOS FLEET PERFORMANCE INC.

And

AVEOS TECHNICAL US, INC.

Petitioners

And

FTI CONSULTING CANADA INC.

Monitor

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As of March 30, 2012

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No. 500-11-042345-120

SUPERIOR COURT
Commercial Division
DISTRICT OF MONTRÉAL

**IN THE MATTER OF THE PROPOSED PLAN OF
COMPROMISE ARRANGEMENT OF :**

**AVEOS FLEET PERFORMANCE INC. / AVEOS
PERFORMANCE AÉRONAUTIQUE INC.**

And

AERO TECHNICAL US, INC.

Insolvent Debtors/Petitioners

And

FTI CONSULTING CANADA INC.

Monitor

Roger P. Simard

File: 548731-1

**MOTION FOR DIRECTIONS AND AUTHORIZATIONS
PERTAINING TO THE PAYMENT OF CERTAIN SUMS TO
EMPLOYEES**

**(Section 6(5), 11 AND 36(7) of the Companies
Creditors' Arrangements Act R.C.S. 1985 c. C-36**

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