

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-042345-120

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

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

and

AERO TECHNICAL US, INC.

Insolvent Debtors

and

FTI CONSULTING CANADA INC.

Monitor

and

NORTHGATEARINSO CANADA INC.

Petitioner

**DE BENE ESSE MOTION TO STRIKE THE DE BENE ESSE NOTICE BY DEBTOR
COMPANY TO DISCLAIM OR RESILIATE AN AGREEMENT**
(Section 32(2) of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36 ("CCAA"))

**TO THE HONOURABLE MARK SCHRAGER, S.C.J, SITTING IN COMMERCIAL DIVISION,
IN AND FOR THE DISTRICT OF MONTREAL, PETITIONER, NORTHGATEARINSO
CANADA INC. RESPECTFULLY SUBMITS AS FOLLOWS:**

1. Pursuant to a Global Master Services Agreement, NorthgateArinso Canada Inc. ("**NGA**") has been providing certain human resource and the payroll services to Aveos Fleet Performance Inc. ("**Aveos**"). A copy of the Global Master Services Agreement (the "**Agreement**") dated June 30th, 2010 is filed *under seal* in support hereof as **Exhibit R-1**;
2. By letter dated May 7, 2012, Aveos, through its legal counsel, informed NGA of its intention to terminate the Agreement, as amended from time to time, allegedly for faulty execution by NGA, effective immediately and without any compensation. A copy of the letter of Aveos' counsel dated May 7, 2012 (the "**Termination Letter**"), along with the *De Bene Esse* Notice by Debtor Company to Disclaim or Resiliate an Agreement pursuant

to section 32(1) CCAA (the "Notice") enclosed therewith, is filed *en liasse* in support hereof as **Exhibit R-2**;

3. As appears from the Notice dated May 7, 2012 (Exhibit R-2), Aveos further indicated its intention to disclaim or resiliate the Agreement pursuant to section 32(1) CCAA.
4. NGA is justified in requesting that the Notice be stricken as it does not respect the terms of section 32 CCAA, particularly when taking into consideration the factors set out in subsection 32(4) CCAA, the whole as follows:

- a. The disclaimer or resiliation of the Agreement could not possibly enhance the prospects of a viable compromise or arrangement as it is manifest, since Aveos ceased its operations and terminated substantially all of its employees, that Aveos will not be proposing any form of compromise or arrangement to its creditors;
- b. In this regard, on April 20, 2012, this Honourable Court already rendered an Order Approving the Divestiture Process for the sale of all of Aveos' lines of business, divisions and assets, the whole as appears from the Court record;
- c. In the judgment rendered orally by this Honourable Court on April 20, 2012, it is specifically noted that "*the Debtor cannot or will not recommence to carry on business activities.*", the whole as appears from the Procès-Verbal d'audience filed in support hereof for ease of reference as **Exhibit R-3**;
- d. In addition to the foregoing, neither the motion documents, hearing minutes, Notice or Termination Letter contain any indication that Aveos intends to propose a plan of arrangement or compromise, let alone giving any indication that the disclaimer or resiliation of the Agreement would enhance the prospect of a viable plan;

5. Moreover, the Agreement contains provisions allowing for the possibility of termination for cause (section 20.1 of the Agreement) and termination for convenience (section 20.2 of the Agreement), hence Aveos' decision to make the Notice *de bene esse*;

6. As appears from section 20.2 of the Agreement, a termination for convenience by Aveos does specifically entail the obligation for the latter to pay a termination fee to NGA calculated on pro rata basis in light of the services being terminated:

20.2.2 "*Upon termination of this Agreement in whole or in part pursuant to (...) Clause 20.2.1, NorthgateArinso will be paid all monies due to NorthgateArinso under this Agreement or the part of the Agreement which is terminated up to termination, as the case may be, after taking into account the amounts previously paid, together with the Termination for Convenience Fee provided in Schedule 4-(Charges) pro rata in the Charges for the Services terminated (measured on the basis of the Charges for the last full calendar month prior to the termination notice).*"

7. The allegations contained in the Letter (Exhibit R-2) to the effect that Aveos is justified in terminating the Agreement allegedly for faulty execution are false and unfounded;

8. In fact, Aveos never provided NGA with a written notice of its failure to perform the Agreement as provided by section 20.1 of the Agreement, which suggests that Aveos is now attempting to invoke termination for cause in an effort to avoid payment of the termination fee provided in case of a termination for convenience;
9. More specifically, the allegations set out in the Letter are false in that :
 - a. The majority of the difficulties encountered by NGA at its call centre were in relation to underpayment resulting from Aveos having failed to properly enter information into its own in-house system (known as "TAG");
 - b. When NGA approached Aveos in an attempt to sensitize it to this issue Aveos simply responded that they were too busy to address it. This resulted in the false perception that NGA was somehow responsible for the resulting difficulties in addressing employee concerns.
 - c. Aveos is responsible to enter information into its own system. In fact, pursuant to the Agreement, NGA provides a employee and manager self-service function that enables Aveos to enter personal data;
 - d. With respect to timelines, NGA never missed a payroll deadline prior to Aveos' filing under the CCAA and, with one exception, has always remained on time and on budget post-filing;
 - e. With respect to this one exception, which relates to the production of the records of employment ("ROE") for the mass employees termination, NGA was to employ its best efforts for the ROE production and advised Aveos that it would require ten (10) days following the last payroll period;
 - f. Aveos was then ordered by the Court to reimburse certain amounts that it had asked NGA to deduct from a previous employee pay period (contrary to NGA's recommendations), which resulted in the need for an additional pay period, thereby delaying the ROE production for reasons not attributable to NGA and despite NGA's best efforts;
 - g. With respect to the allegations of the Letter (Exhibit R-2) regarding technical issues and functionality, the scope of the project was defined prior to deployment and NGA has fulfilled its obligations in this respect as set out in the Agreement;
 - h. In fact, while certain issues were known to both parties during the implementation phase of the solution, all of these issues were addressed by NGA and the final solution was implemented successfully by NGA, the whole with the consent and approval of Aveos;

- i. With respect to the allegations of the letter regarding alleged EWS platform testing and “humongous fees”, Aveos was perfectly aware before executing the Agreement that it was NGA’s first EWS client in Canada;
 - j. In fact, the agreed upon fee structure took this into consideration in that NGA had agreed to a reduced amount on that basis.
10. While NGA disputes any material failure on its part to perform the Agreement, Aveos’ failure to provide the notice of defaults under section 20.1 of the Agreement prevented NGA from the opportunity to respond to such notice or, in the event of a material failure, cure same within 30 days from its receipt of the notice, as provided by section 20.1 of the Agreement.
11. As appears from the foregoing, Aveos has attempted to disguise their termination of the Agreement for convenience as either a termination for cause or a resiliation pursuant to section 32 CCAA;
12. In either event, Aveos is unjustifiably seeking to avoid payment of the termination for convenience fee in the amount of \$501,381, calculated in accordance with Schedule 4 of the Agreement, and, as such, NGA is justified in requesting the orders and conclusions sought herein;
13. In this regard, it is manifest that the Agreement has been terminated by Aveos for convenience such that, as at May 7, 2012, Aveos became indebted to NGA for an amount of \$501,381 representing the termination fee payable under the Agreement, which obligation represents a post-fling obligation and is due in full;
14. As a result, NGA is entitled to request that Aveos be ordered to pay to it the sum of \$501,381 as termination fee under the Agreement;
15. The present motion is well founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present motion;

STRIKE the *De Bene Esse* Notice by Debtor Company to Disclaim or Resiliate an Agreement dated May 7, 2012;

DECLARE the Global Master Services Agreement dated June 30th, 2010 terminated by Aveos Fleet Performance Inc. for convenience pursuant to section 20.2 of the Global Master Services Agreement;

ORDER Aveos Fleet Performance Inc. to pay to NorthgateArinso Canada Inc. a termination fee in the amount of \$501,381, the whole with interest at the legal rate as of the date hereof;

THE WHOLE with costs.

MONTREAL, May 22, 2012

Gowling Lafleur Henderson
GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

CANADA

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N°: 500-11-042345-120

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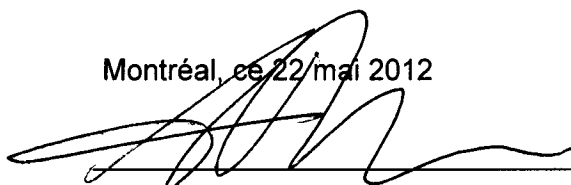
Petitioner

ATTESTATION D'AUTHENTICITÉ
Selon l'art. 82.1 du C.p.c.

J'atteste que la copie du formulaire de l'affidavit est conforme au fac-similé de cet acte
reçu par télécopieur:

Nature du document : Affidavit de Ian Latulippe
Numéro de Cour : 500-11-042345-120
Nom de l'expéditeur : Ian Latulippe
Numéro du télécopieur émetteur : 450-430-8003
Lieu de la transmission : Blainville
Date de la transmission : Le 22 mai 2012
Heure de transmission : 5:25:40 PM

Montréal, ce 22/mai 2012



François Viau,
Gowling Lafleur Henderson

CANADA

SUPERIOR COURT
COMMERCIAL DIVISION

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Petitioner

AFFIDAVIT OF IAN LATULIPPE

I, the undersigned, Ian Latulippe, Account Director, exercising my profession at NorthgateArinso, located at 215 St-Jacques, Suite 1000, Montreal, Quebec, H2Y 1M6, solemnly declare as follows:

1. I am a duly authorized representative of Petitioner;
2. Pursuant to a Global Master Services Agreement, NorthgateArinso Canada Inc. ("NGA") has been providing certain human resource and the payroll services to Aveos Fleet Performance Inc. ("Aveos"). A copy of the Global Master Services Agreement (the "Agreement") dated June 30th, 2010 is filed *under seal* in support hereof as Exhibit R-1;
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6. Moreover, the Agreement contains provisions allowing for the possibility of termination for cause (section 20.1 of the Agreement) and termination for convenience (section 20.2 of the Agreement), hence Aveos' decision to make the Notice *de bene esse*;
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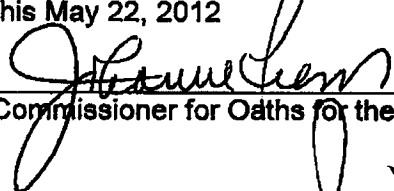
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 15. As a result, NGA is entitled to request that Aveos be ordered to pay to it the sum of \$501,381 as termination fee under the Agreement;
 16. All the facts alleged in the present De Bene Esse Motion to Strike the De Bene Esse Notice by Debtor Company to Disclaim or Resiliate an Agreement are true to the best of my knowledge.

AND I HAVE SIGNED:



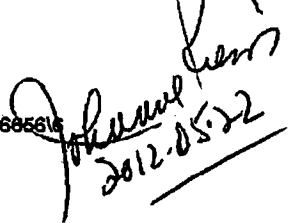
Ian Latulippe

SWORN TO before me in Blainville
this May 22, 2012



Commissioner for Oaths for the province of Quebec

MTL_LAW 183685616


2012-05-22

CANADA

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Petitioner

NOTICE OF PRESENTATION

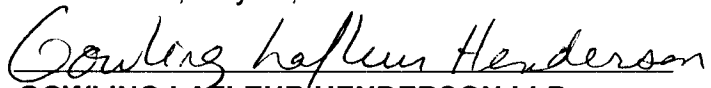
TO: **SERVICE LIST**

NOTICE OF PRESENTATION

TAKE NOTICE that the present *De bene esse Motion to strike the de bene esse notice by debtor company to disclaim or resiliate an agreement* will be presented for adjudication before the honourable Judge Mark Schragger of the Superior Court of Quebec, sitting in commercial division, at the Montreal Courthouse located at 1 Notre-Dame St. East, **at a date and time to be determined** or so soon as counsel may be heard

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, May 22, 2012


GOWLING LAFLEUR HENDERSON LLP
Attorneys for NorthgateArinso Canada Inc.

N° 500-1-042345-120

SUPERIOR COURT (Commercial Division)
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Petitioner

BL0052

**DE BENE ESSE MOTION TO STRIKE THE DE
BENE ESSE NOTICE BY DEBTOR COMPANY TO
DISCLAIM OR RESILATE AN AGREEMENT
(SECTION 32(2) OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C. 1985,
C. C-36 ("CCAA"))**

ORIGINAL

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Tel.: (514) 392-9530

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INIT.: FV/ml

a/s 3510