

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

THE FORMER DIRECTORS OF THE
PETITIONERS:

Eugene I. Davis
Joseph C. Kolshak
John C. Charles
Donald E. Thomas
Sean Menke
Timothy J. Bernlohr
Todd Dillabough

Applicants

MOTION FOR AN AMENDMENT TO THE INITIAL ORDER
(Section 11 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 APPLICANTS 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 (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 also sought the establishment, by this Honourable Court, of certain charges and securities in the Property of the Petitioners, namely, a charge for the benefit of the directors and officers of the Petitioners to the extent of the amount of Five Million Dollars (\$5,000,000) in respect of potential post-filing liabilities (“**D&O Charge**”), as well as an Administration Charge in the aggregate amount of Three Million Dollars (\$3,000,000), as appears from the Court record herein.
4. 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 Mr. Jonathan Solursh as the 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.
5. On the same day, this Honourable Court granted in part the said CRO Motion and appointed Mr. Jonathan Solursh as 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**”).
6. As appears from the said CRO Order, this Court established a charge and security in the Property to the extent of the aggregate amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) (the “**CRO Charge**”).
7. By this Motion, the Applicants seek the issuance of an amendment to the Initial Order in view of the circumstances described herein. Specifically, the Applicants seek a reduction of the D&O Charge from the amount of Five Million Dollars (\$5,000,000) to Two Million Dollars (\$2,000,000).

II. **THE D&O CHARGE**

8. Prior to the Petitioners (collectively, “**Aveos**”) commencing a CCAA proceeding, the Applicants acting in their capacity as members of the board of directors of Aveos (the “**Board**”) undertook significant efforts to attempt to develop a restructuring plan that would allow Aveos to survive as a going concern. To implement this, the Board, in consultation with its major stakeholders, resolved to commence a restructuring proceeding in this Court in furtherance of that goal with respect to the engines and

components businesses that Aveos believed could be salvaged or appropriately monetized for the benefit of Aveos' creditors.

9. On March 19, 2012, Aveos filed the CRO Motion.
10. Following the CRO Motion to the Court on March 20, 2012, the Court appointed Mr. Solursh as CRO. As CRO, Mr. Solursh has the powers provided for in the CRO Order.
11. As the Monitor reported in its Second Report to this Court dated April 3, 2012:
 - (a) the directors may face post filing liabilities in excess of \$10 million (these amounts are in addition to the Potential Air Canada Liabilities) following the termination of employees on March 20, 2012;
 - (b) the creation of the D&O Charge affects only the economic position and recovery of the Lenders (assuming the validity and enforceability of the Lenders' security -- the principal amount owing to the Lenders or Third Party Secured Lenders (as defined in the Motion for the Initial Order) totals \$198.3 million;
 - (c) the Lenders supported the D&O Charge;
 - (d) to date, no creditor has informed the Monitor that it wished to contest the D&O Charge;
 - (e) the D&O Charge can only be triggered should the directors & officers insurance coverage in place be denied or be insufficient, without any right of subrogation in favour of any insurer; and
 - (f) the D&O Charge is unlikely to be detrimental to the potential recovery of unsecured creditors, yet it may be beneficial to the terminated employees of the Petitioners (subject to the protection afforded to them pursuant to 6(5) CCAA and the *Wage Earner Protection Act*) who could ultimately be the beneficiaries of this Charge.
12. The Applicants believe that preservation of the D&O Charge is both necessary and appropriate, particularly in light of potential post-filing claims arising from the shut-down of the Aveos businesses.
13. Since the appointment of the CRO, certain payments to employees have been authorized by this Court which have reduced some of the potential exposure to the Applicants. Significant potential exposure still remains for the Applicants and while the Applicants do benefit from D&O insurance, the D&O Charge was requested and granted to protect the Applicants in the event such insurance does not respond.
14. In the circumstances, particularly given the reduction of post-filing employee liabilities the Applicants believe that a reduction of the D&O Charge to \$2 million is appropriate, and would request the Court to approve a reduction of the D&O Charge in said amount.

15. The Applicants have discussed the proposed reduction of the D&O Charge with the Lenders and the Monitor and understand that those parties support the proposal.
16. Maintenance of the D&O Charge will not only protect the Applicants (and current and former officers) from the potentially significant liability that exists as a result of the circumstances of these insolvency proceedings, but will also indirectly benefit the terminated employees of the Petitioners who would ultimately be the beneficiaries of this charge.

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 Motion shall have the meaning ascribed to them in the Initial Order granted by the Honourable Mark Schragger, J.S.C., in the present matter dated March 19, 2012.
- [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] **DECLARE** that the D&O Charge created under the Initial Order, as amended, be reduced to \$2,000,000;
- [5] **THE WHOLE WITHOUT COSTS** save and except in the event of a contestation, in which case, with costs against the contesting party.

Toronto, April 27, 2012



CASSELS BROCK & BLACKWELL LLP
John N. Birch, LSUC #38968U
Attorneys for Applicants

AFFIDAVIT

I, the undersigned, **Joseph C. Kolshak**, duly authorized representative of the Applicants, being the former directors of Aveos Fleet Performance Inc. and Aero Technical US, Inc., which have their corporate headquarters at BAN 3, 2311 Alfred-Nobel Blvd., in the City and district of Montréal, Province of Québec, Canada, H4S 2B6, do hereby solemnly declare as follows:


1. I am the duly authorized representative of the Applicants herein;
2. All of the facts alleged in the present Motion are true.

AND I HAVE SIGNED:

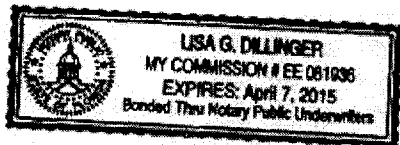


JOSEPH C. KOLSHAK

Solemnly declared before me in
H. Myers, H. this 27 day of April 2012



Commissioner of Oaths and
Notary Public for the State of Florida



NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the *Motion for an Amendment to the Initial Order* will be presented before the Honourable Mark Schragger, 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 May 4th, 2012** at 9h30 a.m., or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

Toronto, April 27, 2012



CASELS BROCK & BLACKWELL LLP

John N. Birch, LSUC#38968U

Attorneys for Applicants