

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No: 500-11-042345-120

SUPERIOR COURT

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

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
WELLS FARGO BANK NATIONAL ASSOCIATION,
as Fondé de Pouvoir
and
CRÉDIT SUISSE AG, CAYMAN ISLAND BRANCH,
as Fondé de Pouvoir
and
AVEOS HOLDING COMPANY as Fondé de
Pouvoir
and
BREOF/BELMONT BAN L.P.
and
THE ATTORNEY GENERAL OF CANADA
and
AON HEWITT, as administrator of the Aveos
Fleet Performance Inc. pension plans
and
QUEBEC REVENUE AGENCY
and
CANADA REVENUE AGENCY

Mis en cause

MOTION FOR APPROVAL OF A SECOND INTERIM DISTRIBUTION
(Sections 9 and 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 PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. Further to the filing of a *Petition for the Issuance of an Initial Order* (the "**Initial CCAA Petition**") as well as a *Motion for the Issuance of an Amended and Restated Initial Order*, this Honourable Court issued an *Initial Order* on March 19, 2012, as amended and restated by further orders (collectively the "**Initial Order**"), the whole as appears from the Court record. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Initial CCAA Petition or in the Initial Order.
2. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed Monitor of the Petitioners (the "**Monitor**") and a stay of proceedings (the "**Stay of Proceedings**") was granted until April 5, 2012 and subsequently extended by further orders until February 1, 2013 (the "**Stay Period**").
3. On March 20, 2012, a Chief Restructuring Officer ("**CRO**") was appointed over the Petitioners, with authority to carry on, manage, operate and supervise the management and operations of the business and affairs of the Petitioners, further to the Petitioners' *Motion for the Appointment of a Chief Restructuring Officer*, the whole as appears from the Court record.
4. On October 24, 2012, an Order Approving an Interim Distribution in the amount of \$12,500,000 to Credit Suisse AG, Cayman Islands Branch, as Administrative Agent (the "**Agent**"), on behalf of the Third Party Secured Lenders was granted by this Honourable Court (the "**First Interim Distribution Order**").
5. The Petitioners are holding sufficient net proceeds to address all known priority claims and, as will be set forth in the reports to be filed with the Court prior to the hearing of this *Motion for approval of a Second Interim Distribution* (the "**Motion**"), are now in a position to proceed with a second limited interim distribution in the amount of \$12,500,000 to the Agent on behalf of the Third Party Secured Lenders and seek the approval of this Honourable Court.

6. The Petitioners intend to seek an extension of the Stay Period, before it expires, so as to enable the completion of various pending matters in these proceedings including the second interim distribution process proposed in the Motion.
7. Prior to this Motion, the Petitioners have sought to identify the known claims of parties asserting priority over the Third Party Secured Lenders and either seek to have them resolved by agreement, provide for them out of funds that would be reserved pending a final distribution to be made at a later date or proceed according to further orders of this Court, with a view to preserving third party rights pending a final distribution in due course.
8. The Petitioners are of the view that initiating a second interim distribution pursuant to the relief requested in the Motion will provide sufficient notice and an appropriate forum for determining all third parties' rights that may be affected by the proposed second interim distribution or any subsequent distribution.
9. Notwithstanding the proposed second interim distribution, the Petitioners will continue to hold proceeds of realization in an amount in excess of the total of the Administration Charge, the D&O Charge, the CRO Charge (collectively, the "CCAA Charges"), the known amounts asserted by third parties as potential priority claims, and current and projected post-filing claims. As such, the CCAA Charges and any other valid priority claims will not be affected by the order sought in the present Motion.

II. THE POST-FILING CLAIMS AND CCAA CHARGES

10. The Petitioners have estimated the nature and amount of current and projected post-filing claims, including claims covered by the Administration Charge and will retain, after the order sought in the Motion, sufficient funds to pay such claims in the normal course.
11. With respect to the CRO Charge, it is projected that an order of the Court made pursuant to a motion for a final distribution will provide for the final payment of the CRO's remaining fees and disbursements and seek a discharge of the CRO and a claims bar order with respect to claims against the CRO, so that the CRO Charge can be discharged or, alternatively, replaced with an irrevocable letter of credit, if required at that time.
12. With respect to potential claims against the current and former directors and officers of the Petitioners ("D&O Claims"), the Petitioners estimate that the amount of the potential claims that are anticipated to be asserted will far exceed the amount of the D&O Charge but is expected to be less than the amount of available D&O insurance coverage. Therefore it is projected that, in conjunction with a final distribution, the D&O Charge will need to remain in

place, or be replaced by an irrevocable letter of credit, until such D&O Claims are resolved or paid.

III. POTENTIAL PRIORITY CLAIMS

13. The Petitioners, in consultation with the Monitor, have sought to identify any claims of third parties that have asserted or are anticipated to assert a priority over the security of the Third Party Secured Lenders, the whole as will appear from reports to be filed with the Court prior to the hearing on this Motion.
14. One such claim is for an amount of approximately \$400,000 owing to certain former employees of Aveos, which is acknowledged to have the priority set forth at section 81.3 of the *Bankruptcy and Insolvency Act*, in the event of a bankruptcy. This amount, plus employer contributions thereon of approximately \$41,000, is to be paid to former employees on or before December 21, 2012 pursuant to the order of this Court dated November 12, 2012.
15. The Petitioners have been advised by the pension administrator of the Aveos defined benefit pension plans of a claim to priority over the secured claims of the Third Party Secured Lenders in respect of certain unpaid special payments. This claim is based on the assertion of a deemed trust claim under the *Pension Benefits Standards Act (Canada)*. This potential priority claim, which is in the amount of \$2,804,450, is disputed by the Third Party Secured Lenders.
16. Until a motion for a final distribution is presented and decided, the Petitioners will retain a sufficient amount to satisfy the claims which are alleged to be subject to the deemed trust under the *Pension Benefits Standards Act (Canada)* with respect to unpaid special payments.
17. Two other potential priority amounts were provided for in the cash flow projections but are still under review: (i) an amount of approximately \$612,000 in current service contributions to the union pension plan, pending verification by the actuaries; and (ii) an amount of approximately \$438,000 for interest and penalties on federal payroll source deductions, pending verification with the tax authorities.
18. Until payment is made or until a motion for a final distribution is presented and decided, the Petitioners will retain a sufficient amount to satisfy the claims in the preceding paragraph.
19. At this time, the Petitioners and the Monitor have not been informed of any other claim that would purport to assert priority over the security of the Third Party Secured Lenders.

20. The Petitioners understand that the total debt outstanding to the Third Party Secured Lenders is in excess of \$217,341,891 as at October 10, 2012, less the amount of \$12,500,000 paid pursuant to the First Interim Distribution Order. The Monitor has obtained an independent legal opinion confirming the validity and enforceability of the security held by the Third Party Secured Lenders as has been reported previously to the Honourable Court.

IV. CONCLUSIONS SOUGHT

21. It is respectfully submitted that it is in the interests of justice and in the best interests of the Petitioners, their creditors, and other affected parties that the present motion be granted and that the second interim distribution be approved and completed as expeditiously as possible.
22. The Motion is supported by the Monitor and Petitioners are informed that the Monitor will submit at the hearing its report and favourable recommendation with respect to the approval of the second interim distribution.
23. The Petitioners therefore respectfully submit that the Motion should be granted in accordance with its conclusions.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

- [1] **GRANT** the *Motion for Approval of a Second Interim Distribution ("Motion")*;
- [2] **DECLARE** that the time for service of the 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;
- [3] **APPROVE** the second interim distribution of an amount of U.S.\$12,500,000 (the "**Second Interim Distribution**") by Petitioners to Credit Suisse AG, Cayman Islands Branch, as Fondé de Pouvoir and Administrative Agent (the "**Agent**") on account of the claim of the Third Party Secured Lenders under the ABL First Lien Credit Agreement and the Take Back Second Lien Credit Agreement (as defined and described in the *Petition for the Issuance of an Initial Order*);
- [4] **AUTHORIZE** the Petitioners, in consultation with the Monitor, to carry out the Second Interim Distribution;
- [5] **ORDER** the provisional execution of the Order to be rendered herein notwithstanding appeal and without the necessity of furnishing security;

General Provisions

- [6] **DECLARE** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a bankruptcy order filed pursuant to the BIA in respect of the Petitioners and any bankruptcy 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 are final and irreversible and shall be binding upon any trustee in bankruptcy or receiver that may be appointed in respect of any of the Petitioners and shall not be void or voidable by creditors of the Petitioners and do not and will not constitute: a) settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law; or b) a distribution of property requiring the Petitioners, the CRO or any officer or director to seek and obtain any certificate or authorization of any nature whatsoever;
- [7] **ORDER** that the Monitor and the Petitioners may apply to this Court for advice and direction in connection with the discharge or variation of their respective powers and duties under or otherwise in relation to the Order;
- [8] **REQUEST** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of this Order. All court, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Petitioners, the Monitor, the Directors and the Officers, as may be necessary or desirable to give effect to this Order;
- [9] **THE WHOLE WITHOUT COSTS** save and except in the event of contestation, in which case, with costs against the contesting party.

Montréal, December 12, 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 7171 Cote-Vertu Boulevard West, H4S 1Z3, 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. I have personal knowledge of the facts alleged in the *Motion for Approval of a Second Interim Distribution*, dated December 12, 2012, which are true.

AND I HAVE SIGNED:



JONATHAN SOLURSH

SOLEMNLY DECLARED before me at Montreal,
this 12th day of December 2012

 *avocate au
barreau de Montreal*

**COMMISSIONER OF OATHS FOR THE
PROVINCE OF QUÉBEC**

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the *Motion for Approval of a Second Interim Distribution* will be presented before the Honourable Mark Schragger of the Superior Court, sitting in and for the Commercial Division, in a **room number of the Montreal Courthouse to be determined**, situated at 1 Notre-Dame Street East, Montreal, on **February 1st, 2013 at 9h15**, or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, December 12, 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

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

And

AL.

Mis-en-cause
Roger P. Simard
File: 548731-1

**MOTION FOR APPROVAL OF A
SECOND INTERIM DISTRIBUTION
(Sections 9 and 11 of the Companies' Creditors
Arrangement Act ("CCAA"))**
ORIGINAL



Fraser Milner Casgrain LLP
1 place Ville Marie, Suite 3900
Montréal, QC, Canada H3B 4M7

TÉLÉPHONE 514 878 8800
FAX 514 866 2241