

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
BROOF/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 FOURTH 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 November 22, 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 U.S.\$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. On February 1st, 2013, an Order Approving a Second Interim Distribution in the amount of U.S.\$12,500,000 to the Agent, on behalf of the Third Party Secured Lenders was granted by this Honourable Court (the "**Second Interim Distribution Order**").
6. On June 26, 2013, the First and Second Interim Distribution Orders were corrected and an Order Approving a Third Interim Distribution in the amount of U.S.\$25,000,000 to the Agent, on behalf of the Third Party Secured Lenders was

granted by this Honourable Court (the “Third Interim Distribution Order” and, collectively with the First and Second Interim Distribution Orders, as corrected, the “Distribution Orders”).

7. The Petitioners have made the distributions to the Agent pursuant to the Distribution Orders.
8. The Petitioners are holding sufficient net proceeds to address all known priority claims and, as will be set forth in the report of the Monitor to be filed with the Court at or prior to the hearing of this *Motion for approval of a Fourth Interim Distribution* (the “Motion”), are now in a position to proceed with a fourth limited interim distribution in the amount of U.S.\$18,000,000 to the Agent on behalf of the Third Party Secured Lenders and seek the approval of this Honourable Court.
9. 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.
10. The Petitioners are of the view that initiating a fourth interim distribution pursuant to the relief requested in this Motion will provide sufficient additional notice and an appropriate forum for determining all third parties’ rights that may be affected by the proposed fourth interim distribution or any subsequent distribution, to the extent not previously identified.

II. THE POST-FILING CLAIMS AND CCAA CHARGES

11. Notwithstanding the proposed fourth 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.
12. 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.
13. 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 or other suitable form of security, if required at that time.

14. With respect to the D&O Charge for potential claims against the current and former directors and officers of the Petitioners, the Petitioners propose that it be dealt with in conjunction with a final distribution, taking into account the terms of the D&O insurance coverage and other relevant considerations.

III. POTENTIAL PRIORITY CLAIMS

15. 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 a report of the Monitor to be filed with the Court at or prior to the hearing on this Motion.

A) Resolved Claims

16. In conjunction with the Distribution Orders, certain priority claims that had been identified previously have now been resolved.
17. As previously reported, an amount of approximately \$400,000 owing to certain former employees of Aveos, which was acknowledged to have the priority set forth at section 81.3 of the *Bankruptcy and Insolvency Act* in the event of a bankruptcy, was paid to former employees (together with employer contributions thereon of approximately \$41,000) on or before December 21, 2012 pursuant to the order of this Court dated November 12, 2012. As explained in the Petitioners' Second Motion for Directions and Authorizations Pertaining to the Payment of Certain Sums to Employees, the purpose of making this payment was to ensure that no further priority claims could be asserted by employees and former employees.
18. In addition, after review of the claim in the amount of \$612,000 for current service contributions to the union pension plan by the CRO, such amount was determined to be owing and was paid, with the approval of the Monitor, in February 2013.
19. As also previously reported, one other potential priority amount, being an amount of approximately \$467,000 for employer's premium payable by Aveos according to the *Employment Insurance Act* and employer's contribution according to the Canada Pension Plan, together with interest and penalties on pre-filing federal payroll source deductions has been paid by Petitioners.

20. Finally, the Quebec Revenue Agency had asserted another potential priority amount, being an amount of approximately \$435,000 for employer's contribution to the Régie des Rentes du Québec, as well as interest and penalties on pre-filing provincial payroll source deductions. This amount has also been paid by Petitioners.
21. The amounts referenced in paragraphs 19 and 20 were paid with the approval of the Monitor and the Third Party Secured Lenders for the reasons previously reported to this Honourable Court. Applications to cancel the interest and penalties payable on these amounts have been filed and are pending as at this date.

B) Outstanding Claims

22. The Office of the Superintendent of Financial Institutions, on behalf of the pension administrator of the Aveos defined benefit pension plan for non-union employees, asserted 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 currently in the amount of \$2,804,450, is disputed by the Third Party Secured Lenders.
23. The Office of the Superintendent of Financial Institutions seeks an order of this Court with respect to this priority issue in a motion filed in the Court record and which is anticipated to be heard by this Honourable Court on October 22, 2013.
24. Until the motion referenced above or, in the alternative, a motion for a final distribution, is presented and decided, the Petitioners will retain a sufficient amount to satisfy the above claim which is alleged to be subject to the deemed trust under the *Pension Benefits Standards Act (Canada)*.
25. 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, other than a notice of review received recently by Aveos which could lead to a potential reassessment for an amount of approximately \$30,000 for federal payroll source deductions or contributions (CPP and EI), as a result of the audit by Canada Revenue Agency of the 2012 payroll reports. This claim is being reviewed and any amount payable will be dealt with as a post-filing and/or priority claim, as applicable.

IV. INDEBTEDNESS OWING TO THE THIRD PARTY SECURED LENDERS

26. The Petitioners understand that the total debt outstanding to the Third Party Secured Lenders was in excess of U.S.\$217,341,891 as at October 10, 2012, before taking into account the aggregate amount of U.S.\$50,000,000 which has

subsequently been paid to the Agent pursuant to the Distribution Orders. 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 this Honourable Court.

27. As mentioned in the Twelfth Report of the Chief Restructuring Officer to the Court dated August 6, 2013, the CRO was advised by the Agent of the completion of a transaction that resulted in a substantial payment being made by a guarantor and the repayment of the first lien tranche of the indebtedness owed to the Third Party Secured Lenders. Because this was a payment by a guarantor and the guarantor is entitled to be subrogated on a subordinated basis to repayment in full to the Third Party Secured Lenders, there is no resulting change to the overall secured indebtedness which is outstanding from Aveos' perspective. In any event, the outstanding balance remaining due to the Third Party Secured Lenders (after taking into account interest and costs and allowing a credit for the guarantee payment but without taking into account the effect of the subrogation rights of the guarantor) is approximately \$60,000,000 on the second lien tranche, before the distribution proposed herein. This amount is still substantially greater than the expected realizations from the remaining assets of Aveos.

V. CONCLUSIONS SOUGHT

28. 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 Motion be granted and that the fourth interim distribution be approved and completed as expeditiously as possible.
29. 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 fourth interim distribution.
30. 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 Fourth 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 fourth interim distribution of an amount of U.S. \$18,000,000 (the “**Fourth 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 (if applicable) and/or 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 Fourth Interim Distribution;

General Provisions

- [5] **ORDER** that nothing in this Order shall prejudice or otherwise affect the rights and remedies of any person under any existing insurance policy;
- [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 settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law;
- [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, September 26, 2013



DENTONS CANADA 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 730 Cote-Vertu Boulevard, 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 Fourth Interim Distribution*, dated September 26, 2013, which are true.

AND I HAVE SIGNED:

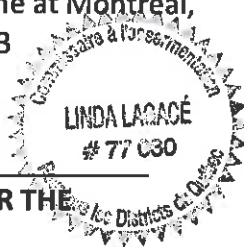


JONATHAN SOLURSH

SOLEMNLY DECLARED before me at Montreal,
This 26th day of September 2013



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



NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the *Motion for Approval of a Fourth Interim Distribution* will be presented before the Honourable Mark Schrager of the Superior Court, sitting in and for the Commercial Division, **in Room 16.12 of the Montreal Courthouse**, situated at 1 Notre-Dame Street East, Montreal, on **October 21, 2013**, at **9h15 a.m.**, or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, September 26, 2013

DENTONS CANADA 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
AND ARRANGEMENT OF :

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

And
FTI CONSULTING CANADA INC.

Insolvent Debtors/Petitioners

Monitor

And
WELLS FARGO BANK NATIONAL ASSOCIATION, as Fondé de
Pouvoir And
CREDIT 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

Mises-en-cause

Me Roger P. Simard/ Our file: 548732-001

MOTION FOR APPROVAL OF A FOURTH
INTERIM DISTRIBUTION

(Sections 9 and 11 of the Companies' Creditors Arrangement Act
("CCAA"))

ORIGINAL



Dentons Canada LLP
1 Place Ville Marie, Suite 3900
Montréal QC H3B 4M7
Tel. : 514 878 8800
Fax : 514 866 2241

dentons.com
BB0822