

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

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 PETITIONERS RESPECTFULLY SUBMIT
THE FOLLOWING:

I. INTRODUCTION

1. Further to the filing, by Aveos Fleet Performance Inc. ("**Aveos**") and Aero Technical US, Inc. ("**Aero US**" and, collectively with Aveos, the "**Petitioners**"), 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 meaning 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 was granted until April 5, 2012

and subsequently extended by further orders until February 1st, 2013, the whole as appears from the Court record.

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. By this Motion, the Petitioners seek the issuance of an order amending the Initial Order in view of the circumstances described herein. Specifically, Petitioners seek to have the authority to lease all or part of the immovable property owned by Aveos (defined in the Initial Order as the “Immovable”), being the building used by Aveos’ Engines Maintenance Centre (“EMC”) division (the “EMC Building”).

II. THE AMENDMENT SOUGHT

5. The Initial Order contains customary provisions in respect of the Petitioners’ rights to convey, transfer, assign, lease or otherwise dispose of the Property. Specifically, section 32(c) of the Initial Order reads as follows:

DECLARES that, to facilitate the orderly wind down or restructuring of their business and financial affairs (the “Restructuring”) but subject to such requirements as are imposed by the CCAA, the Petitioners shall have the right to:

(c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$500,000 or \$2,000,000 in the aggregate, save and except that no Property necessary for the completion of work in process may be disposed of without the authorization of the Court.

6. In light of the manner in which the affairs of the Petitioners have progressed, and in the context of the initiatives being currently contemplated by the Petitioners under the direction of the CRO and with the supervision of the Monitor, it has become apparent that it would be in the interests of the Petitioners and, generally, of their stakeholders, for the Initial Order to be amended so as to grant Petitioners the authority to enter into a short or long term lease in respect of the EMC Building.
7. As reported by the CRO in its Eighth Report to the Court and in the Addendum thereto, the Petitioners have been actively pursuing an opportunity involving an *en bloc* sale of the EMC business, concurrent with a lease of the EMC Building to the prospective purchaser. Discussions are also ongoing with respect to alternate transaction structures that may involve the filing of a Plan of Arrangement under the CCAA or an outright

purchase of the EMC Building but, under either of those scenarios, the purchaser would nonetheless need to lease the EMC Building at least for some period of time.

8. While the Petitioners are still in negotiations with respect to these alternatives, and although the potential purchaser of the EMC assets is still analysing its various options at this time, the Petitioners' ability to enter into a lease in respect of the EMC Building would materially advance the negotiations and planning involved in this potential transaction, the terms of which are fairly complex, and facilitate the implementation of the transaction once such agreement has been reached.
9. Aveos and the potential acquirer of the EMC division still need to come to terms on various aspects of the potential transaction, but the short or long term occupation and use of the EMC Building is a critical component under any scenario and, therefore, the restrictions contained in the Initial Order regarding the leasing of the EMC Building pose a potential impediment.
10. It is submitted that the amendment sought and the ability for Aveos to enter into a lease with respect to the EMC Building is not contrary to the spirit of the CCAA, would not cause prejudice to the Petitioners' stakeholders, and would be conducive to the advancement of promising initiatives undertaken by Aveos under the direction of the CRO and the supervision of the Monitor.
11. Although the structure of the transaction remains the subject of ongoing discussions and negotiations, the proposed acquisition of the EMC division by a strategic acquirer and world-leading manufacturer would lead to a restart of Aveos' operations and generate employment opportunities for Aveos' former EMC employees as well as future business relations for suppliers.
12. As matters currently stand, the potential purchaser contemplates that it may well elect, starting January 1, 2013, to occupy the EMC premises pursuant to a short term lease or some form of temporary occupation agreement, the terms of which remain subject to ongoing discussions and negotiations. The potential transaction may also involve signing a longer term lease or, in the alternative, an outright purchase of the EMC Building which purchase would be subject to approval by the Court.
13. It is therefore respectfully submitted that it is interests of justice and of the Petitioners and their stakeholders that the Initial Order be amended and restated so that it may specifically grant the Petitioners, with the prior written consent the Monitor and of the Administrative Agent for the Third Party Secured Lenders, the authority to enter into a lease for a term not exceeding 10 years (with renewal rights for up to an additional 10 years) in respect of the EMC Building, described as follows:

An emplacement located on the site of the Montreal-Pierre Elliott Trudeau International Airport, in the City of Montreal, Province of Quebec, known and designated as lot number **THREE MILLION**

EIGHT HUNDRED NINETY-NINE THOUSAND THREE HUNDRED AND FORTY-FOUR (3 899 344) of the Cadastre du Québec, Registration Division of Montreal; with all the buildings thereon erected, more particularly the building and other structures erected thereon bearing civic number 7171 Côte-Vertu boulevard West, City of Montreal (Borough of Saint-Laurent), Province of Quebec, H4Z 1Z3.

14. At the hearing of this Motion, the CRO and the Monitor will be in a better position to explain more fully to this Court the structure of the proposed transaction, the status of the negotiations and discussions with the proposed purchaser and the timeline contemplated by the parties. However, given the business imperatives, the clear benefits which this proposed transaction offers to the Estate and stakeholders, the necessity in any event to obtain the approval of both the Monitor and of the Administrative Agent for the Third Party Secured Lenders, Aveos submits that the Court should grant this Motion.
15. The authority herein sought by Petitioners, if granted by this Court, would still be exercised, where applicable, within the limits of any other covenants, undertakings and obligations of Aveos regarding the EMC Building and subject to the rights of other interested parties with respect thereto.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

- [1] **GRANT** the present *Motion for an Amendment to the Initial Order* (the “**Motion**”);
- [2] **DECLARE** that all capitalized terms not otherwise defined in the order to be rendered herein shall have the meaning ascribed to them in the Initial Order, as amended and restated (the “**Initial Order**”);
- [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 AND DECLARE** that the Initial Order be and is, by virtue of the judgment to be rendered herein, amended so as to add the following paragraph, following paragraph 32(f):

32(g) Notwithstanding anything else contained herein, with the prior written consent of the Monitor and of the Administrative Agent for the Third Party Secured Lenders, enter into a lease for a term not exceeding 20 years, in respect of all or any portion of the building used by the Petitioners’ Engine Maintenance Centre

and constituting the Immovable (as defined at paragraph [50.1] of this Order).

- [5] **THE WHOLE WITHOUT COSTS** save and except in the event of a contestation, in which case, with costs against the contesting party.

Montréal, December 12, 2012

Fraser Milner Casgrain

FRASER MILNER CASGRAIN LLP
Attorneys for Petitioners

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 Schrager, j.s.c., of the Superior Court, sitting in the Commercial Division, at the Montréal Courthouse, situated at 1, Notre-Dame Street East, in a **room number to be determined, on December 14, 2012 at 9h30 a.m.**, or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, December 12, 2012

Fraser Milner Casgrain

FRASER MILNER CASGRAIN LLP

Attorneys for Petitioners

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Me Roger P. Simard / Me Ari Y. Sorek ☐#548732-1

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ORDER**

ORIGINAL



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