

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

NO: 500-11-042345-120

DATE: June 26, 2013

PRESIDING: THE HONOURABLE MARK SCHRAGER, J.S.C.

***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/Petitioners

and

FTI CONSULTING CANADA INC.

Monitor

ORDER APPROVING AN EMPLOYEE CLAIMS PROCESS

- [1] **ON READING** *Petitioners' Motion for Approval of an Employee Claims Process* (the "**Motion**") pursuant to Sections 9 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended the "**CCA**"), the affidavit of Jonathan Solursh filed in support thereof, the Twenty-Third Report of the Monitor FTI Consulting Canada Inc. and the Eleventh Report of the Chief Restructuring Officer, relying upon the submissions of counsel and being advised that the interested parties were given prior notice of the presentation of the Motion;

[2] **SEEING** the provisions of the CCAA;

WHEREFORE, THE COURT:

[3] **GRANTS** the Motion for Approval of an Employee Claims Process (the "Motion");

[4] **DECLARES** 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 further service thereof is hereby dispensed with;

[5] **APPROVES** the Employee Claims Process as set forth in this Order and Exhibit R-1 as filed in the Court record this day;

[6] **AUTHORIZES** the Petitioners, under the supervision of the CRO and in consultation with the Monitor to carry out the Employee Claims Process;

[7] **ORDERS** the provisional execution of this Order notwithstanding appeal;

[8] **ORDERS** that, for the purposes of this Order and the Employee Claims Process, Exhibit R-1, the following terms shall have the following meanings:

a) **"Business Day"** means a day, other than a Saturday, a Sunday or a non-judicial day (as defined at article 6 of the *Code of Civil Procedure*, R.S.Q., c. C-25, as amended);

b) **"CCA"** means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

c) **"CCA Proceedings"** means the proceedings commenced by the Petitioners in the Court under Court File No. 500-11-042345-120;

d) **"Claim"** means a claim as defined in the CCAA;

e) **"Court"** means the Superior Court of Quebec (Commercial Division), Judicial District of Montreal;

f) **"Employee"** means any current or former employee of the Petitioners;

g) **"Employee Appeal Motion"** means, with respect to any Employee Claim, the motion which shall be served upon the Monitor and the Petitioners and filed in Court by the Employee Claimant disputing such revision or disallowance of the Employee Claimant's Employee Claim and setting out the reasons for the appeal;

h) **"Employee Claim"** means any Claim by an Employee Claimant, but only to the extent that such Claim relates to wages or other amounts

payable to the Employee Claimant by reason of his or her employment with Petitioners or as a result of the termination thereof;

- i) **"Employee Claim Amount"** means the amount of the Employee Claim, as calculated by Petitioners and approved by the Monitor;
- j) **"Employee Claimant"** means any Employee asserting an Employee Claim and shall include, as the context requires and subject to paragraph [13] of this Order, the IAMAW as representative of any such Employee Claimant to the extent that the IAMAW files an Employee Claim on behalf of such Employee Claimant;
- k) **"Employee Claims Bar Date"** means 5:00 p.m. (Montreal time) on August 12, 2013;
- l) **"Employee Claims Letter"** means the materials provided by the Monitor to Employee Claimants, which materials shall include the Employee Claim Amount and the Employee Eligible Wage Amount, a blank Employee Proof of Claim (substantially in the form set out at **Schedule 1** of Exhibit R-1) and such other materials as the Petitioners, in consultation with the Monitor, may consider appropriate or desirable;
- m) **"Employee Claims Process"** means the procedures outlined in this Order, including the Schedules referred to in Exhibit R-1;
- n) **"Employee Claims Process Order" or "Order"** means this Order;
- o) **"Employee Eligible Wage Amount"** means the portion of an Employee Claim Amount which consists of "eligible wages" of the Employee Claimant for the purposes of WEPPA according to the books and records of Petitioners and, once an Employee Claim is accepted, deemed to be accepted or determined by the Court in accordance with this Order, shall be the amount used for the purposes of calculating any payments to be made pursuant to WEPPA;
- p) **"Employee Proof of Claim"** means the proof of claim setting forth the Employee Claimant's Employee Claim in accordance with paragraphs [16] or [15] hereof, substantially in the form set out at **Schedule 3** of Exhibit R-1;
- q) **"Excluded Employee Claim"** means any Claim by an Employee that is not an Employee Claim;
- r) **"Filing Date"** means March 19, 2012;

- s) **"IAMAW"** means the International Association of Machinists and Aerospace Workers;
- t) **"Initial Order"** means the order of the Honourable Justice Schragger made in these CCAA Proceedings on March 19, 2012, as amended and restated;
- u) **"Known Employee Claimant"** means an Employee whose Employee Claim is recorded in the Petitioners' books and records;
- v) **"Monitor"** means FTI Consulting Canada Inc. in its capacity as court-appointed monitor of the Petitioners;
- w) **"Monitor's Website"** means <http://cfcanada.fticonsulting.com/aveos/>
- x) **"Notice of Employee Claims Bar Date"** means the notice for publication, substantially in the form set out at **Schedule 2** of Exhibit R-1;
- y) **"Notice of Revision or Disallowance (Employee Claim)"** means the notice referred to in paragraph [20] hereof, informing an Employee Claimant that the Petitioners, in consultation with the Monitor, have revised or disallowed all or part of such Employee Claimant's Employee Claim set out in its Employee Proof of Claim and setting out the reasons for revision or disallowance;
- z) **"Person"** means any individual, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government body or any agency, officer or instrumentality thereof or any other entity;
- aa) **"Petitioners"** means Aveos Fleet Performance Inc. and Aero Technical US, Inc.
- bb) **"Proven Employee Claim"** means the amount of the Employee Claim of an Employee Claimant determined in accordance with the provisions of the CCAA and this Order, and either i) deemed to have been completed and filed in accordance with paragraph [14] hereof or ii) proven by delivering a signed Employee Proof of Claim to the Monitor before the Employee Claims Bar Date, but only after and to the extent that such Employee Proof of Claim has been accepted by the Monitor in consultation with the Petitioners;
- cc) **"Public Notice"** means the notice of the Employee Claims Process to be published, posted or sent in accordance with paragraphs [9]

and [10] hereof, substantially in the form of the notice at **Schedule 2** of Exhibit R-1;

- dd) "Unasserted Employee Claim" has the meaning ascribed thereto in paragraph [16] hereof;
- ee) "WEPPA" means the *Wage Earner Protection Program Act* (S.C. 2005, c. 47, s.1) and regulations thereunder.

Publication of Notice

- [9] **ORDERS** that the Monitor shall take all reasonable steps to cause the Public Notice to be published in each of the *Globe and Mail* (National Edition) and *La Presse* or *Le Devoir* within seven (7) Business Days after the date of this Order, or as soon as practicable thereafter.
- [10] **ORDERS** that the Monitor shall cause the Public Notice to be posted on the Monitor's website from the date of this Order until at least ten (10) Business Days after the Employee Claims Bar Date.

Employee Claims Letter

- [11] **ORDERS** that the Monitor shall send a copy of the Employee Claims Letter by prepaid ordinary mail (except as otherwise provided below) to each of the Known Employee Claimants (where applicable, addressed to the last known address of such Known Employee Claimant) as shown in the books and records of the Petitioners) who is:
 - a) Listed in the records of any Petitioner as being an Employee of such Petitioner as at March 19, 2012 or at any time during the period from March 19, 2012 to the date of mailing of the Employee Claims Letter; or
 - b) Identified to the Monitor by the Petitioners as having existing or threatened litigation in respect of an Employee Claim against a Petitioner;and to
 - c) Each Person who has notified the Monitor in writing before the Employee Claims Bar Date of a potential Employee Claim; and
 - d) Any other Person who makes a request to the Monitor for an Employee Claims Letter before the Employee Claims Bar Date.
- [12] **ORDERS** that the Monitor shall be entitled to rely on schedules, records and other information provided to it by the Petitioners as to the Employees entitled to receive the Employee Claims Letter and the calculation of the amounts set out therein and the Monitor shall have no liability with respect

to its failure to send an Employee Claims Letter to any Person.

- [13] **ORDERS** that the Monitor shall post a copy of the form of Employee Claims Letter and a copy of this Order on its website from the date of this Order until at least ten (10) Business Days after the Employee Claims Bar Date.
- [14] **ORDERS** that the Monitor shall send a copy of this Order and the Employee Claims Letter to the Service List.
- [15] **ORDERS** that the IMAW has the right to file, for and on behalf of any or all of its members and former members who are or were Employees, one or more collective or individual Employee Proofs of Claim, subject to the right of any such Employee to file his or her individual Employee Proof of Claim and provided that, if both the Employee and the IMAW file an Employee Proof of Claim on behalf of a particular Employee, the Employee Proof of Claim filed by the individual Employee shall be recognized to the exclusion of the Employee Proof of Claim filed by the IMAW, provided that the Monitor shall deliver a copy of each such Employee Proof of Claim to the IMAW.

Employee Claims Bar Date

- [16] **ORDERS** that any Employee Claimant wishing to assert an Employee Claim for the Employee Claim Amount as set out in the Employee Claims Letter shall be deemed to have filed a completed and signed Employee Proof of Claim with the Monitor for such Employee Claim Amount and the Employee Proof of Claim for each such Employee Claimant shall be deemed to have been received by the Monitor on or before the Employee Claims Bar Date.
- [17] **ORDERS** that any Employee Claimant wishing to assert an Employee Claim for any amount other than the Employee Claim Amount shall deliver a completed and signed Employee Proof of Claim specifying such Employee Claim to the Monitor so that the Employee Proof of Claim is received by the Monitor on or before the Employee Claims Bar Date.
- [18] **ORDERS** that any Employee Claimant who does not deliver an Employee Proof of Claim completed and signed in accordance with the Employee Claims Letter specifying an Employee Claim to the Monitor on or before the Employee Claims Bar Date shall be and is hereby forever barred from making or enforcing against the Petitioners an Employee Claim for any amount other than for the Employee Claim Amount (each, an "Unasserted Employee Claim"), which Unasserted Employee Claim shall be forever extinguished, barred, discharged and released and all such Employee Claimants shall be deemed to have fully and finally released and discharged all Unasserted Employee Claims against each of the Petitioners.

Determination of Employee Claims

- [19] **ORDERS** that the Monitor or Petitioners shall be entitled to bring a motion for directions with respect to the determination of any Employee Claims that

have been filed in accordance with the Employee Claims Process.

- [20] **ORDERS** that any Employee Claim denominated in any currency other than Canadian dollars shall, for the purposes of the Employee Claims Process, be converted to and constitute obligations in Canadian dollars, such calculation to be done by the Monitor using the Bank of Canada noon spot rate on the Filing Date.
- [21] **ORDERS** that the Monitor shall maintain a summary of all Employee Proofs of Claim received by it, and such summary shall include the name of the Employee Claimant, the amount of the Employee Claim and the nature and particulars of the Employee Claim. The Monitor shall provide copies of such summary and of the Employee Proofs of Claim it has received to the Petitioners and their counsel. The Monitor shall provide copies of such summary to any stakeholder with an interest in Employee Claims who requests such information and their respective counsel.

Adjudication of Employee Claims

- [22] **ORDERS** that the following procedure shall apply where an Employee Claimant files an Employee Proof of Claim on or before the Employee Claims Bar Date:
- a) The Petitioners and the Monitor shall review each Employee Proof of Claim that is received by the Employee Claims Bar Date and the Monitor, with the assistance of the Petitioners, may accept, revise or disallow the classification and/or amount of such Employee Claim and may determine that portion, if any, of such Employee Claim that is an Employee Eligible Wage Amount. At any time, the Petitioners or the Monitor may request additional information from the Employee Claimant with respect to any Employee Claim;
 - b) The Monitor, with the assistance of the Petitioners, may attempt to consensually resolve the classification and amount of any Employee Claim with the Employee Claimant prior to accepting, revising or disallowing such Employee Claim;
 - c) If the Monitor, with the assistance of the Petitioners, determines to revise or disallow an Employee Claim, the Monitor shall notify the Employee Claimant of the revision or disallowance by delivering a Notice of Revision or Disallowance (Employee Claim) as provided in this Order. Where an Employee Proof of Claim is accepted, no notice of this decision need be given by the Monitor; provided, however, that the Monitor shall publish a list of Employee Claimants whose Employee Claims have been accepted as of the relevant date, on the Monitor's Website;

- d) if an Employee Claimant disputes the classification or amount of an Employee Claim as set forth in a Notice of Revision or Disallowance (Employee Claim), then such Employee Claimant shall contest such Notice of Revision or Disallowance (Employee Claim) by serving to the Monitor, the Monitor's counsel and Petitioners' counsel and filing in Court an Employee Appeal Motion as provided in this Order, so that it is received and filed by no later than 5:00 p.m. (Montreal time) on the day which is twenty-one (21) days after the date of the delivery or deemed delivery of the Notice of Revision or Disallowance (Employee Claim) delivered by the Monitor or such later date as the Petitioners, in consultation with the Monitor, and the Employee Claimant may agree in writing or the Court may order;
- e) any Employee Claimant who fails to appeal a Notice of Revision or Disallowance (Employee Claim) by the deadline and in the manner set forth in subparagraph d) above shall be deemed to accept the classification and amount of the Employee Claim as set out in the Notice of Revision or Disallowance (Employee Claim) and the Employee Claim, as set out in the Notice of Revision or Disallowance (Employee Claim), shall constitute a Proven Employee Claim;
- f) If an Employee Claimant disputes the classification and/or amount of an Employee Claim as set forth in a Notice of Revision or Disallowance (Employee Claim) of an Employee Claim, the Monitor, in consultation with the Petitioners, may attempt to consensually resolve the classification and the amount of the Employee Claim with the Employee Claimant.

Set-Off

- [23] **ORDERS** that the Petitioners may set off (whether by way of legal, equitable or contractual set-off) against, and deduct from, an Employee Claim, any claims related to the employment of the Employee Claimant that any of the Petitioners may have against such Employee Claimant but only to the extent that such deduction is permitted pursuant to section 254.1 of the Canada Labour Code; provided, however, that neither the failure to do so nor the allowance of any Employee Claim hereunder shall constitute a waiver or release by the Petitioners of any such claim that the Petitioners may have against such Employee Claimant.

Notice of Transferees

- [24] **ORDERS** that, if the holder of an Employee Claim transfers or assigns the whole of such Employee Claim to another Person, neither the Monitor nor the Petitioners shall be obligated to give notice or otherwise deal with the transferee or assignee of such Employee Claim in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory

evidence of such transfer or assignment, shall have been received and acknowledged by the Petitioners and the Monitor in writing and, thereafter, such transferee or assignee shall for the purposes hereof constitute the "Employee Claimant" in respect of such Employee Claim. Any such transferee or assignee of an Employee Claim shall be bound by any notices given or steps taken in respect of such Employee Claim in accordance with this Employee Claims Process Order prior to receipt and acknowledgment by the Petitioner and the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of an Employee Claim takes the Employee Claim subject to any right of set-off to which the Petitioners may be entitled with respect to such Employee Claim. For greater certainty, a transferee or assignee of an Employee Claim is not entitled to set off, apply, merge, consolidate or combine any Employee Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to any of the Petitioners. Reference to a transfer in this Employee Claims Process Order includes any transfer or assignment, whether absolute or intended as security. Nothing in this Order shall affect the application of section 37 of the WEPPA.

Notices and Communications

- [25] **ORDERS** that any notice or other communication to be given under this Order by an Employee Claimant to the Monitor or the Petitioners shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if given by email or facsimile, addressed to:

To the Petitioners:

AVEOS FLEET PERFORMANCE INC.
Attention: Office of the Chief Restructuring Officer
E-mail: aveos@relgrp.com
Fax Number: 514.856.7420

With a Copy To Petitioners' Counsel:

DENTONS CANADA LLP
Attention: Mr. Roger P. Simard
E-mail: roger.simard@dentons.com
Fax Number: 514.866.2241

To the Monitor:

FTI CONSULTING CANADA INC.
Attention: Office of the Monitor
E-mail: aveos@fticonsulting.com
Fax Number: 416.649.8101

With a Copy To Monitor's Counsel:

NORTON ROSE FULBRIGHT LLP

Attention: Mr. Sylvain Rigaud

E-mail: sylvain.rigaud@nortonrosefulbright.com

Fax Number: 514.286.5474

- [26] **ORDERS** that any party hereto may change its address for service from time to time by notice in the manner herein provided.
- [27] **ORDERS** that any document sent by the Monitor pursuant to this Order may be sent by email, ordinary mail, registered mail, courier or facsimile transmission. A Person shall be deemed to have received any document pursuant to this Order three (3) Business Days after the document is sent by mail and one (1) Business Day after the document is sent by courier, email or facsimile transmission.

General Provisions

- [28] **ORDERS** that nothing in this Order shall prejudice or otherwise affect the rights and remedies of any Person under any existing insurance policy.
- [29] **ORDERS** that nothing in this Order shall affect any Excluded Employee Claim.
- [30] **ORDERS** that the provisions of this Order concerning Employee Claims including, without limitation, the provisions concerning the Employee Claims Bar Date and its effect, and any determinations made by the Monitor, the Petitioners and the Court pursuant to this Order, shall survive the bankruptcy or receivership of any of the Petitioners, and shall be binding on any trustee in bankruptcy or receiver appointed in respect of any of the Petitioners.
- [31] **ORDERS** that a Proven Employee Claim shall be deemed to have been filed with any trustee in bankruptcy or receiver appointed in respect of any of the Petitioners upon delivery of the Proven Employee Claims and any related records by the Monitor to such trustee in bankruptcy or receiver for the purposes of the application of the WEPPA and that portion of each Proven Employee Claim that is determined pursuant to the Employee Claims Process to be an Employee Eligible Wage Amount shall be deemed to be the amount of "eligible wages" used by any trustee in bankruptcy or receiver for purposes of sub-section 21(1) of the WEPPA.
- [32] **ORDERS** 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 this Order.
- [33] **REQUESTS** 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.

[34] **THE WHOLE WITHOUT COSTS.**



MARK SCHRAGER, J.S.C.

Hearing date: June 26, 2013

COPIE CONFORME



Cynthia Backett
Greeter adjoint