

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., c. C-36, as amended)

IN THE MATTER OF THE PLAN OF  
COMPROMISE OR ARRANGEMENT OF:

AVEOS FLEET PERFORMANCE INC./AVEOS  
PERFORMANCE AÉRONAUTIQUE

- and -

AERO TECHNICAL US, INC.

Debtors/Respondents

- and -

FTI CONSULTING CANADA INC.

Monitor

- and -

AIR CANADA

Petitioner

PETITIONER'S EMERGENCY MOTION FOR AN ORDER LIFTING THE STAY OF  
PROCEEDINGS TO REPOSSESS CERTAIN ASSETS  
(Sections 11 and 11.02 and ff. of the *Companies' Creditors Arrangement Act*)

TO THE HONOURABLE JUSTICE MARK SHRAGER, J.S.C., OR TO ONE OF THE  
HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL  
DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE  
PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

I. PREAMBLE

1. On March 19, 2012, this Court issued an order (the "Initial Order") pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA") in respect of Aveos Fleet Performance Inc. ("Aveos") and Aero Technical US, Inc. (collectively with Aveos, the "Debtors"), as appears from the Court record.

2. Pursuant to the Initial Order, FTI Consulting Canada Inc. (the "**Monitor**") was appointed monitor of the Debtors and a stay of proceedings (the "**Stay of Proceedings**") was granted in favour of the Debtors until and including April 5, 2012, as appears from paragraph 11 of the Initial Order.
3. On March 20, 2012, this Court issued an order appointing Mr. Jonathan Solursh (the "**CRO**") as chief restructuring officer of the Debtors, as appears from the Court record.
4. The petitioner in the context of the present motion is Air Canada ("**Air Canada**" or the "**Petitioner**"), Canada's largest licensed air carrier which provides, *inter alia*, domestic and international passenger and cargo air transportation services.
5. In order to carry out its air transportation business, Air Canada owns or leases aircraft and additional associated parts, including aircraft engines, auxiliary power units ("**APUs**"), components, expendable parts and other equipment (the "**Air Canada Assets**").
6. Until it ceased its operations, Aveos was the main (and in many instances the exclusive) maintenance repair and overhaul ("**MRO**") service-provider for the Air Canada Assets. Since the beginning of 2011, Air Canada undertook 135 airframe checks and Aveos performed 123, or 91%, of them. In addition, Aveos performed 52 of 56, or 93%, of engine checks performed for Air Canada over that time frame.
7. Maintenance work in connection with the Air Canada assets was provided by Aveos along with ancillary and other related services in six areas which are critical to the operations of Air Canada:
  - Airframe maintenance;
  - Engine maintenance;
  - APU maintenance;
  - Components maintenance;
  - Ancillary services; and
  - Training services;(collectively, the "**Aveos Services**").
8. The Aveos Services were performed by Aveos at its Montreal (YUL), Toronto (YYZ), Winnipeg (YWG) and Vancouver (YVR) facilities.

## II. RELIEF SOUGHT

9. Air Canada seeks, on an urgent basis, an order lifting the stay of proceedings to allow Air Canada to repossess the following Air Canada Assets which are currently in Aveos' possession:

- (a) one (1) Airbus A330-300 aircraft, Fin 937, Canadian Registration Marks: C-GHKX, Manufacturer's Serial Number: 412 (the "**A330 Aircraft**") currently in a wide body aircraft hangar (designated as "Building No. 3 - 747 Hangar") located at 750 Côte-Vertu Road West in Dorval, Québec; and
- (b) nine (9) aircraft engines, Engine Serial Numbers 731954, 731533, 575596, 741496, 741424, 575417, 741486, 741670 and 193294 currently at the Engine Maintenance Center (the "**EMC Facility**") located at 7171 Côte-Vertu Road West, Saint-Laurent, Québec;

the whole, as detailed, with ancillary relief, in the conclusions to this Motion.

### III. AGREEMENTS

- 10. The relief sought herein is grounded in Air Canada's rights as an owner or lessee of the Air Canada Assets. In addition, Air Canada derives further rights from the agreements that structure and govern the relationship between Air Canada and Aveos. The focus on access under these agreements, as described below, demonstrates the criticality ascribed by the parties to access rights and the importance of ensuring that these rights be respected.
- 11. The performance of the Aveos Services had been effected subject to the terms of a *General Terms Agreement for Technical Services* between Air Canada and Aveos dated as of October 1, 2006 (the "**GTA**"), as appears from a copy of the GTA communicated herewith, under confidential seal, as **Exhibit P-1**.
- 12. Under section 5.7 of the GTA, Air Canada benefits from a clear right to take control over any services that were to be performed by Aveos in the event that Aveos is unable or unwilling to perform said services, which is presently the case.
- 13. Moreover, on March 12, 2010, Aveos and Air Canada executed an agreement entitled *Access Agreement* (the "**Access Agreement**"), as appears from a copy of said Access Agreement and two *Access Acknowledgment Agreements* executed by Lehman Commercial Paper Inc. in its capacity as Administrative and Collateral Agent for the Lenders and for the Second Lien Lenders (said terms as defined therein), communicated herewith, *en liasse* and under confidential seal, as **Exhibit P-2**.
- 14. Pursuant to the Access Agreement, Air Canada benefits from clear access and use rights (as defined in the Access Agreement and described below, the "**Access and Use Rights**") if there occurs both:
  - (i) any "Insolvency Event" (where the term "Insolvency Event" is broadly defined as including any proceedings instituted under by Aveos the CCAA); and

- (ii) a "Material Service Disruption" which does not result from any breach of any obligation owed to Aveos by Air Canada (where the term "Material Service Disruption" is defined as a failure by Aveos to perform a portion of the Aveos Services which results in a material interruption of said services);

as appears from Section 2.4 of the Access Agreement, Exhibit P-2.

- 15. In this respect, Air Canada has at all times fully respected all of its contractual obligations towards Aveos and Air Canada unequivocally denies any allegations to the contrary.
- 16. The Access and Use Rights are triggered in the present circumstances and Air Canada submits that the Stay of Proceedings should be lifted to allow it to exercise the rights which the parties contractually agreed to under both the GTA and the Access Agreement. In fact, the Access Agreement provides a framework which specifically provides for the type of situation in which Aveos finds itself in today.
- 17. The Access and Use Rights that may be exercised by Air Canada under the Access Agreement include the following:
  - (i) *enter on and into any premises of the Aveos Group on which the AC Property is located to remove such AC Property;*
  - (ii) *use any equipment or other property of the Aveos Group located on premises of the Aveos Group where such AC Property is located to assist or effect the removal of AC Property;*
  - (iii) *use any premises, equipment or other property owned by, leased or licensed to the Aveos Group (provided that the Aveos Group is not in default of such lease or license) to complete the Services in Process with respect to any AC Property;*
  - (iv) *subject to compliance with any applicable collective agreement, use the services of personnel of the Aveos Group (to the extent requested by AC and to the extent the personnel continue to be employed by the Aveos Group) or of AC or any third person retained by AC in order to remove AC Property from any premises of the Aveos Group or to complete the Services in Process with respect to any AC Property; and*

*(v) subject to Section 4.8 hereof, obtain access to, consult and use, retain copies (or, if required, as owner or operator of the AC Property, originals) of all information and records of the Aveos Group, whether in physical or electronic form, pertaining to the AC Property and the exercise by AC of any right or power under this Agreement.*

as appears from s. 2.1 of the Access Agreement, Exhibit P-2.

18. The Access Agreement also specifically provides for the following:
- (a) in exercising its rights, Air Canada shall, inter alia, use reasonable care in the custody and preservation of Aveos' property and premises, comply with the terms of any lease, license agreement or other arrangement and maintain Aveos' property and premises (Section 2.6);
  - (b) the exercise of Air Canada's rights shall be at Air Canada's sole cost expense (including the payment of third-party rent by Air Canada, where applicable) (Section 3.1);
  - (c) in the event Air Canada is prevented from exercising its Access and Use Rights or has reasonable grounds to believe that it may be prevented from doing so, Air Canada may, to avoid the irreparable harm that would otherwise be caused to Air Canada, seek relief by way of an injunction from any court of competent jurisdiction (Section 2.8). This provision of the Access Agreement recognizes the critical importance for Air Canada to be able to access the Air Canada Assets and exercise its Access and Use Rights;
  - (d) the rights, powers and remedies of Air Canada under the Access Agreement are not exclusive and Air Canada is not precluded from exercising other rights, powers or remedies, whether at law, in equity or otherwise (Section 4.9);
19. Air Canada is fully entitled to exercise its Access and Use Rights and will abide by the terms and conditions of the Access Agreement.
20. Furthermore, on July 13, 2011, Aveos and Air Canada executed an *Airworthiness Agreement for the Maintenance Arrangement Between Air Canada and Aveos Fleet Performance Inc.* (the "**Airworthiness Agreement**"), pursuant to which Aveos granted Air Canada and its authorized representatives a general right to oversee all of Aveos Services through:

- (a) complete access right, at any time, to any facility or part of a facility at which Aveos or any of its subcontractors is providing Aveos Services (s. 3.4.1 and 9.3.1);
- (b) complete access to all data and records relating to the Aveos Services for the purpose of performing audits and inspections (s. 3.4.1);
- (c) a right to verify Aveos personnel training documentation and qualifications (s. 5.1.7);
- (d) complete access to all of Aveos' electronic technical record systems (s. 7.1.2);
- (e) complete access to Aveos' IT Qualifications Module which contains all personnel who are qualified to sign a maintenance release on its behalf (s. 2.1 of Annex C);
- (f) complete access to Aveos' airframe maintenance IT system for the purpose of technical research and investigations (s. 1.3.6 of Annex D);
- (g) a right to access and review, at any time, Aveos' Component Mod Status Records which detail the modification status and repair history of each component (s. 2.3 of Annex D);
- (h) a right to obtain, upon service completion, the records, reports and information related to any engine or APU maintenance event (s. 3.3 of Annex D);
- (i) complete access to Aveos' engineering authorization database for Air Canada Assets (s. 1.1.4 of Annex E).

as appears from a copy of said agreement dated June 12, 2007, communicated herewith, under confidential seal, as **Exhibit P-3**;

21. The rights granted to Air Canada under the Airworthiness Agreement must be exercised in order to abide by section 706.09 of the *Canadian Aviation Regulations*, as appears from a copy the relevant excerpt of said regulations, communicated herewith as **Exhibit P-4**.
22. The rights granted to Air Canada under the Airworthiness Agreement are also necessary to abide by section 1.11.7 and 1.11.8 of the International Air Transport Association (IATA) Operational Safety Audit (the "**IOSA**"), as appears from a copy the relevant excerpt of the IOSA, communicated herewith as **Exhibit P-5**.

23. Air Canada currently has had no access to the Aveos facilities, save for limited inspections on specific assets, and must secure such access in order to abide with applicable laws and regulations.

#### IV. AIR CANADA ASSETS IN AVEOS' CUSTODY

24. The Air Canada Assets which are currently in Aveos' custody include aircraft, engines, APUs, components, Expendable Parts, repairable parts, as well as Records and Intellectual Property (capitalized terms as defined below).

##### (1) Aircraft

25. The airframe maintenance services were provided in Montréal (YUL), Winnipeg (YWG) and Vancouver (YVR), at facilities leased by Aveos from Air Canada.
26. As of March 20, 2012 three (3) aircraft had been sent to Aveos for airframe maintenance at Aveos' facilities. The present Motion specifically seeks the repossession of one of these aircraft, the A330 Aircraft.
27. The A330 Aircraft was inducted at Aveos on March 10, 2012 to undergo several airframe maintenance services that were expected to be completed by March 24, 2012. These maintenance services were not completed at the time Aveos terminated all of its airframe maintenance employees, the day prior to filing for court protection under the CCAA.
28. The value of the A330 Aircraft is approximately \$65 million.
29. Following the issuance of the Initial Order and the appointment of the CRO, Air Canada engaged in discussions with the Monitor and the CRO in an effort to consensually resolve and plan the repossession, by Air Canada, of the Air Canada Assets which are in Aveos' possession.
30. An inspection process (the "**Inspection Process**") was initiated by the parties and remains ongoing in respect of several assets to determine, *inter alia*, the inventory and state of Air Canada Assets at Aveos' premises, the nature and value of the work performed and that remains to be performed on each asset and the reconciliation of amounts due by either Air Canada or by Aveos (in which latter case where Air Canada previously paid for work which was not performed).
31. The Inspection Process revealed that the A330 Aircraft requires additional maintenance services before it can be removed from Aveos' premises, including the installation of two main landing gears, the conduct of additional operational checks and the replacement of other aircraft parts. Air Canada estimates that the work could be performed within seven (7) days of being granted complete access as per the orders sought herein.

32. A third-party qualified and experienced MRO service-provider is being retained by Air Canada to perform the work required on the A330 Aircraft. Air Canada's current understanding is that the MRO service provider will be bringing in a team to complete the work on the A330 Aircraft, beginning on or about April 4, 2012.
33. During the course of the Inspection Process, the parties also reached an understanding concerning the amounts owed in connection with the work completed on the A330 Aircraft, pursuant to which Aveos recognized an overpayment by Air Canada in an amount of \$31,000, representing a payment in excess of the value of the work performed to date on this asset.
34. In parallel with the Inspection Process, Air Canada engaged with the Monitor in a title-review process to demonstrate Air Canada's rights in the aircraft, engines and APUs which are currently in Aveos' possession, pursuant to which Air Canada provided the Monitor with bills of sale, leases and other documents to demonstrate Air Canada's rights to repossess said assets (the "**Title Review Process**").
35. The Monitor has confirmed, further to the Title Review Process, that Air Canada is the rightful lessee of the A330 Aircraft and is entitled to repossession of same.
36. Prior to filing for court protection under the CCAA, on March 18, 2012, Aveos publically announced the shutdown of its airframe division and permanently terminated its employees in said division. As a result, Aveos became unable to complete the maintenance on the A330 Aircraft.
37. Air Canada has a right to repossess the A330 Aircraft without further delay subject to an order lifting the Stay of Proceedings. Aveos has no right to retain the A330 Aircraft and this asset will not be required in any potential restructuring of Aveos' operations.
38. The repossession of the A330 Aircraft must be performed on an urgent basis. Indeed, in addition to the work required to remove the A330 Aircraft from Aveos' premises, this aircraft needs to be inducted for a major heavy maintenance check which will last for thirty (30) days *prior* to being deployed during the peak summer season. Air Canada has already secured arrangements with another MRO service provider in this respect.
39. The A330 Aircraft is a two hundred and sixty-five (265) seat aircraft scheduled to fly one (1) round trip per day to European destinations and back, generating revenues in the millions of dollars per month. A failure or further delay to return this aircraft to Air Canada's operations and deploy the aircraft in revenue service would cause significant financial prejudice to Air Canada and significantly increase Air Canada's claims against Aveos.



40. In addition, if the A330 Aircraft was not to reintegrate into Air Canada's fleet in a timely fashion, Air Canada would be forced to reevaluate its summer flights schedules.
41. Such an outcome, in addition to causing financial losses for Air Canada, would damage Air Canada's reputation and goodwill.
42. The A330 Aircraft is currently in a wide-body aircraft hangar located in Dorval, Québec, which, along with certain other premises in the cities in which Aveos operates, are owned by Air Canada and leased to Aveos (the "**Leased Premises**").
43. As part of its ongoing cooperation with Aveos, based on an agreement reached with the Monitor and the CRO, Air Canada has, since March 21, 2012, agreed to waive the rent owed to Air Canada for the Leased Premises on a daily basis, and has undertaken to continue to do so (as agreed to with the Monitor and CRO) as long as Air Canada is satisfied with the progress of the parties' collaborative efforts to secure access to the Air Canada Assets.
44. Air Canada has also agreed to waive, on the same conditions as the waiver of the rent for the Leased Premises, the fees that would regularly be charged by Air Canada to Aveos for access to certain computer information systems.
45. The savings generated for Aveos by the above-mentioned waiver of Air Canada rent and fees are estimated to be over \$65,000 per day, or approximately \$2 million per month.

(2) Engines

46. The engine maintenance services were performed at the EMC Facility located in Saint-Laurent, Quebec.
47. As of March 20, 2012, nineteen (19) engines had been sent to Aveos for engine maintenance at Aveos' facilities. The present Motion specifically seeks the repossession of nine (9) of these engines (the "**Engines**") listed in the table below:

Engine Serial Number	Date Received at Aveos	Expected Date of Return to AC	Value
1. ESN 731-954	Feb 9, 2012	May 12, 2012	Approx. \$ 5.5 M
2. ESN 731-533	Feb 15, 2012	April 21, 2012	Approx. \$ 5.5 M
3. ESN 575-596	Feb 10, 2012	April 15, 2012	Approx. \$ 7 M
4. ESN 741-496	January 15, 2012	March 29, 2012	Approx. \$ 4.5 M
5. ESN 741-424	Feb 18, 2012	Feb 27, 2012	Approx. \$ 4.5 M
6. ESN 575-417	Feb 6, 2012	March 19, 2012	Approx. \$ 7 M

<b>Engine Serial Number</b>	<b>Date Received at Aveos</b>	<b>Expected Date of Return to AC</b>	<b>Value</b>
7. ESN 741-486	March 9, 2012	March 18, 2012	Approx. \$ 4.5 M
8. ESN 741-670	March 16, 2012	March 25, 2012	Approx. \$ 4.5 M
9. ESN 193-294	March 9, 2012	June 10, 2012	Approx. \$ 5 M

48. The Engines were selected following the Inspection Process, on the basis of the fact that no or a nominal amount of preparatory work would be required to remove the Engines from the premises. Certain Engines are already on shipping stands, while others may require a nominal amount of preparatory work (a few hours at most), before being transferred to a shipping stand.
49. The retrieval of the Engines will be handled by Air Canada. Those Engines requiring maintenance will then be sent to third-party MRO service providers for maintenance work. Those Engines that do not require maintenance will be placed in Air Canada's spare engine fleet to support Air Canada's daily flight operations.
50. The parties have agreed to a reconciliation of amounts due in connection with the Engines and further to this analysis, Air Canada owes Aveos less than an aggregate of \$50,000 on account of work performed on these nine (9) Engines.
51. The Monitor has confirmed, further to the Title Review Process, that Air Canada is the rightful lessee and/or owner of the Engines and is entitled to repossession of same.
52. In addition, on March 20, 2012, Aveos publicly announced the shutdown of its operations and permanently terminated all of its employees, such that it became unable to complete the maintenance work on all Air Canada Assets, including the Engines.
53. Air Canada has a right to repossess the Engines without further delay subject to an order lifting the Stay of Proceedings. Aveos has no right to retain the Engines and these assets will not be required in any potential restructuring of Aveos' operations.
54. The repossession of the Engines must be performed on an urgent basis to minimize significant financial prejudice to Air Canada. Indeed, Air Canada currently has no choice but to lease spare engines at expensive rates to make-up for the engines currently at Aveos. Moreover, leases for spare engines (in particular for certain types of engines) are not always readily available and a shortage of engines could lead to operational disruptions.

**(3) Auxiliary Power Units (APUs)**

55. An APU is a smaller turbine-driven engine which provides the auxiliary power required during aircraft operations on the ground (including the start-up of engines) as well as the power necessary for the operation of various electronic systems during the flight.
56. Aveos provided maintenance services on APUs of the type APU GTCP36-300 for Air Canada operated aircraft. These APUs are used to operate 68 out of 81 of Air Canada's Airbus aircraft of the types A319 and A320.
57. The APU maintenance services were performed at the EMC Facility in Dorval, Quebec. APUs which required maintenance were sent by Air Canada to Aveos and refurbished by Aveos, or by a third-party subcontractor of Aveos.
58. As of March 20, 2012, twelve (12) APUs had been sent to Aveos for APU maintenance, of which nine (9) had in turn been sent by Aveos to one of its third-party service providers, namely Honeywell.
59. Air Canada has a right to repossess these APUs without delay. Air Canada is informed that the Monitor is currently completing the Title Review Process in connection with the three (3) APUs which are in Aveos' possession. The parties intend to move forward with a similar repossession process in respect of all APUs, including those held by Honeywell, as early as possible.

**(4) Components**

60. Aveos provided maintenance services on a wide range of Air Canada components, or "rotatable parts", such as landing gears, which are changed on either a pre-determined regular basis, or a "on condition" basis (e.g. if worn). When a rotatable part is changed, the unserviceable part is removed from the aircraft is sent to an MRO service provider to be refurbished and eventually become re-serviceable.
61. The component maintenance services were performed at Aveos' Montreal (YUL), Winnipeg (YWG), Toronto (YYZ) and Vancouver (YVR) facilities. Aveos also subcontracted certain components maintenance services to Aveos subcontractors.
62. As of March 16, 2012, in excess of three thousand (3,000) components had been sent to Aveos for component maintenance at Aveos' facilities or at Aveos' subcontractors' facilities.
63. Air Canada has a right to repossess these components without further delay. A process to do so has yet to be determined and agreed-upon by the parties.

(5) Expendable Parts

64. In contrast with the rotatable parts described above, expendable aircraft parts are of relatively low value and are not repaired in case of failure, but rather replaced when required (the "Expendable Parts").
65. Air Canada holds an extensive inventory of thousands of different Expendable Parts in order to be in a position to effect the required replacement of any Expendable Parts in a timely fashion.
66. During the course of the last few years, Aveos was able to access Air Canada's inventory of Expendables Parts and certain of these spare parts were moved to Aveos' premises with the consent of Air Canada.
67. As a result, although some of Air Canada's inventory of Expendables Parts is located at Air Canada's line maintenance facilities in Montreal (YUL), Toronto (YYZ), Winnipeg (YWG) and Vancouver (YVR), certain of Air Canada's Expendable Parts are currently at Aveos' own MRO facilities.
68. Air Canada and Aveos completed the segregation of the ownership of all Expendable Parts and it was established between the parties, with the use of an algorithm referred to as the Virtual Inventory Management System (VIMS), that certain Expendable Parts located in Aveos' facilities are indeed owned by Air Canada.
69. As of March 12, 2012, Air Canada was the owner of in excess of approximately eight hundred and fifty thousand (850,000) Expendable Parts (of thirty-five thousand (35,000) different types) which are currently located in Aveos' facilities.
70. Air Canada has a right to repossess these Expendable Parts without further delay.

(6) Records and Intellectual Property

71. The performance of the Aveos Services and the regulatory environment in force require Aveos to generate, manage and maintain significant quantities of information and data, including computer databases, in connection with the Air Canada Assets and the Aveos Services, some of which constitute Air Canada intellectual property or proprietary information (collectively, the "Records and Intellectual Property").
72. The Records and Intellectual Property include information, data, records, reports and systems which relate to the Aveos Services and the Air Canada Assets, as well as Air Canada and Aveos personnel training documentation and qualification information, including, without limitation:

- (a) information contained in databases and repositories maintained by Aveos, such as the TIMS system (technical documentation repository used by Aveos and Air Canada which provides an interface to access Air Canada's control documents and aircraft documentation) or the Digital Flight Data Recorder (DFDS) system (which records and monitors various channels of aircraft operational data used to detect operational issues and variances resulting in additional maintenance events);
- (b) work instructions sheets (also called "job cards") which contain maintenance procedures for each aircraft in Air Canada's fleet of aircraft;
- (c) schemes, processes, methods, designs and plans which are typically developed to address specific maintenance issues (the "**Repair Schemes**"). It should be noted, in this respect, that many Repair Schemes are jointly-owned by Aveos and Air Canada.

- 73. The performance of MRO services on Air Canada Assets (including services which were provided by Aveos) by other service-providers or by Air Canada requires the transfer or use of the Records and Intellectual Property currently managed or maintained by Aveos.
- 74. The operation of the Air Canada Assets in compliance with applicable laws and regulations also requires possession of the Records and Intellectual Property.
- 75. In addition, the ongoing maintenance and management of certain records in connection with the Air Canada Assets, which in the ordinary course of business, was performed by Aveos, must continue in accordance with the laws and regulations that govern maintenance activities on aircraft.
- 76. In light of the urgency of the situation, Air Canada seeks an order to ensure that the Records and Intellectual Property be properly transferred or copied to Air Canada to ensure continuous regulatory compliance.

#### V. **GROUNDS FOR THIS MOTION**

- 77. The Title Review Process performed by the Monitor has confirmed the validity of Air Canada's title in respect of the A330 Aircraft and the Engines, the repossession of which is sought by this Motion. In addition, further to a review of the Air Canada-Aveos services agreements, the Monitor has confirmed that Aveos does not claim to have any right to retain any Air Canada Assets, save and except for a right to retain equipment of Air Canada on which contracted work was performed by Aveos but not paid for and which is not otherwise being reasonably disputed in good faith by Air Canada. For any amounts claimed or in dispute, the Monitor has also confirmed that Aveos would waive its retention right in respect of any Air Canada Assets if the amounts in dispute were placed

in escrow pending final determination of any claims between Aveos and Air Canada.

78. Air Canada is well-founded in requesting this Court to lift the Stay of Proceedings in light of the urgency of the situation and the prejudice that will result should the status quo prevail.
79. Aircraft are complex and heavily-regulated equipment. Air Canada's aircraft must be serviced and tested on a regular basis. Engines need to be repaired in order for spare engines to be available. Components need to be serviced in time to replace other components that Air Canada could be required to remove. Spare parts must be made available on short notice and inventories must be replenished in a timely fashion. All of these tasks are required to support Air Canada's daily flight operations.
80. The sudden shutdown of Aveos and termination of all of its employees has led to an ongoing interruption of the performance of the Aveos Services which directly affects Air Canada's carefully-planned maintenance and flight schedules.
81. Air Canada needs to repossess its aircraft, engines and APUs in a timely fashion in order to complete maintenance work on these assets and make them available to continue operating in accordance with current flight schedules. In cases where certain aircraft are in a state that does not allow for their immediate removal, Air Canada will need to have maintenance completed or have the aircraft readied for ferrying before the aircraft can be moved to the premises of another MRO services provider.
82. The repossession of the components, Expendable Parts and Records and Intellectual Property is equally important in that these assets are required to transition the MRO services previously performed by Aveos to new service providers (outsourcing) or to Air Canada itself (insourcing). These matters will be addressed in due course.
83. Air Canada's repossession of all Records and Intellectual Property in connection with these Air Canada Assets is also critical as it is required to operate these assets in compliance with applicable laws and regulations.
84. In addition, in order for Air Canada's own operations to continue, Aveos' information technology infrastructure must remain in place and any related servers, including VIMS, must continue functioning in a manner that will secure all transactions and operations.
85. The current situation can only be addressed in collaboration with and under the supervision of the Monitor, an officer of this Court. It is Air Canada's wish that the ongoing Inspection Process and Title Review Process continue in order to facilitate an orderly repossession of the Air Canada Assets.

86. The objective sought herein is to prevent potentially significant hardship to Air Canada. Such an outcome is in the interest of all of Aveos' stakeholders, since it will serve to reduce the size of any claim which Air Canada could file in a potential restructuring or bankruptcy of Aveos.
87. In their motion for the appointment of the CRO, the Debtors announced that "*Aveos cannot resume its operations*" (paragraph 6) and that the appointment of a chief restructuring officer was desirable "*in order to conduct in an orderly fashion the liquidation of the assets of Aveos while being in a position to eventually consider any other proposal that may be made to the company in connection with a potential restructuring of the latter*" (paragraph 16), as appears from the Court record.
88. It appears from the foregoing that Aveos has yet to determine whether it will undertake a restructuring of its operations, or whether it will liquidate its assets in a bankruptcy scenario.
89. Regardless of the choice of action that is chosen, it is submitted that Air Canada's repossession of its own assets will not have any significant impact on the outcome of Aveos' insolvency proceedings. It is clear that Aveos does not have the capacity to complete the Aveos Services on the Air Canada Assets in accordance with the terms of the agreements between the parties.

## VI. CONCLUSIONS

90. The orders sought herein are fair and reasonable and in the interest of the Debtor and its stakeholders.
91. The filing of Exhibits P-1, P-2 and P-3 is requested under seal in light of the confidential and potentially sensitive commercial information contained in said agreements.
92. Considering the urgency of the situation, the Petitioner requests the provisional execution of the orders sought herein to be rendered notwithstanding any appeal.
93. The present motion is well founded in fact and in law.

### WHEREFORE, MAY THIS COURT:

- [1] **GRANT** the Petitioner's Emergency Motion for an Order Lifting the Stay of Proceedings to Repossess its Assets (the "**Motion**").
- [2] **DECLARE** that the notices given of the present motion are proper and sufficient.
- [3] **DECLARE** that unless otherwise defined, all capitalized terms referred to in this Order shall have the meaning attributed to them in the Motion and in the Initial Order issued by this Court on March 19, 2012, as amended.

- [4] **DECLARE** that Exhibits P-1, P-2 and P-3 filed in support of the Motion be kept confidential and under seal in the Court Record.
- [5] **ORDER** that the Stay of Proceedings shall be lifted for the sole purpose of allowing Air Canada to exercise its rights to repossess the A330 Aircraft, the Engines, as well as the Records and Intellectual Property in connection with these assets (collectively, the "**Repossessed Assets**"), the whole, in accordance with the terms of the *General Terms Agreement for Technical Services* (Exhibit P-1 to the Motion) and the *Access Agreement* (Exhibit P-2 to the Motion), including, without limitation, Air Canada's right to:
- (a) enter on and into any premises of Aveos on which the Repossessed Assets are located to remove such Repossessed Assets;
  - (b) use any equipment or other property of Aveos located on premises of the Aveos where such Repossessed Assets are located to assist or effect the removal of the Repossessed Assets;
  - (c) use any premises, equipment or other property owned by, leased or licensed to Aveos to complete the Services in Process (said terms as defined in the Access Agreement) with respect to any Repossessed Assets;
  - (d) use the services of Air Canada personnel or any third party retained by Air Canada in order to remove the Repossessed Assets from any premises of Aveos or to complete the Services in Process with respect to any Repossessed Assets; and
  - (e) subject to Section 4.8 of the *Access Agreement*, obtain access to, consult and use, retain copies (or, if required, as owner or operator of the Repossessed Assets, originals) of all information and records of Aveos, whether in physical or electronic form, pertaining to the Repossessed Assets and the exercise by Air Canada of any right or power under the Access Agreement.
- [6] **DECLARE** that the exercise of Air Canada's rights as provided for in paragraph [5] of this Order shall be performed in accordance with the terms of any agreement(s) between the Debtors, Air Canada and the Monitor, concerning the specific terms of access, as they may vary for certain assets.
- [7] **DECLARE** that paragraphs [5] and [6] of this Order shall also apply, *mutatis mutandis*, to all other Air Canada Assets which are currently in Aveos' possession and which Air Canada has a right to repossess, subject however to the Monitor's review of Air Canada's contractual rights with respect to such assets and to an agreement regarding the reconciliation of



amounts owing in connection with maintenance work performed as regards each asset.

- [8] **ORDER** that the Debtors shall ensure that all Records and Intellectual Property in connection with the Air Canada Assets which were created, managed or maintained by the Debtors be preserved, more particularly in furtherance of paragraph [5](c) of this Order.
- [9] **ORDER** that the Monitor shall supervise the Debtors' compliance with this Order and shall provide Air Canada and this Court with regular progress reports in connection with the foregoing.
- [10] **RESERVES** the rights of the parties to apply to this Court in order to seek further directions in connection with this Order.
- [11] **ORDER** the provisional execution of the present order to be rendered notwithstanding appeal and without the necessity of furnishing any security.

**WITHOUT COSTS**, save and except in the event of contestation.

MONTRÉAL, April 2, 2012



**STIKEMAN ELLIOTT LLP**

Attorneys for the Petitioner Air Canada

**AFFIDAVIT**

I, the undersigned, Alan Butterfield, having my principal place of business at 7373 Côte-Vertu West, Dorval, Québec, solemnly declare the following:

1. I am Vice-President, Maintenance and Engineering, of Air Canada.
2. All the facts alleged in the *Petitioner's Emergency Motion for an Order Lifting the Stay of Proceedings to Repossess Certain Assets* are true.

Notary Stamp Here

AND I HAVE SIGNED:



A handwritten signature in black ink, appearing to read 'Alan Butterfield', is written over a horizontal line. Below the line, the name 'ALAN BUTTERFIELD' is printed in all caps.

State of Arizona  
County of Maricopa

The foregoing instrument was  
acknowledged before me  
by Alan Butterfield, Vice President,  
Maintenance and Engineering of  
Air Canada

Solemnly declared before me in

Tempe, Arizona, USA, on  
the 2 day of April, 2012

Karen Elaine Reno  
Karen Elaine Reno - Notary Public  
My Commission Expires March 22, 2014

**NOTICE OF PRESENTATION**

**To: Service List**

**TAKE NOTICE** that the *Petitioner's Emergency Motion for an Order Lifting the Stay of Proceedings to Repossess Certain Assets* will be presented before the Honourable Mark Shrager, J.S.C., or one of the Honorable Judges of the Superior Court, sitting in the District of Montréal, at the Montréal Court House, 1 Notre-Dame Street West, Montréal, Québec, on a date and at a time to be determined by the Court and communicated to the Service List.

**DO GOVERN YOURSELVES ACCORDINGLY.**

**MONTRÉAL**, April 2, 2012

*Stikeman Elliott LLP*

**STIKEMAN ELLIOTT LLP**

Attorneys for the Petitioner, Air Canada

SUPERIOR COURT

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N° : 500-11-042345-120

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CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

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IN THE MATTER OF THE PLAN OF COMPROMISE  
OR ARRANGEMENT OF :

AVEOS FLEET PERFORMANCE INC./AVEOS  
PERFORMANCE AÉRONAUTIQUE

-and-

AERO TECHNICAL US, INC.

Debtors/Respondents

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

AIR CANADA

Petitioner

BS0350

O/Ref: 021070-1933

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PETITIONER'S EMERGENCY MOTION FOR AN  
ORDER LIFTING THE STAY OF PROCEEDINGS TO  
REPOSSESS CERTAIN ASSETS

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COPY

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