

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

and

**INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS (IAMAW)**, having a
place of business at 2580 Drew Road, Suite 203,
Mississauga, Ontario, L4T 3M5

Respondent

and

THE ATTORNEY GENERAL OF CANADA,
Complexe Guy Favreau, 200 René-Lévesque
Boulevard West, East Tower, 5th Floor ,
Montreal, Quebec, H2Z 1X4

Respondent

**AMENDED SECOND MOTION FOR DIRECTIONS AND AUTHORIZATIONS PERTAINING TO THE
PAYMENT OF CERTAIN SUMS TO EMPLOYEES**

(Sections 6(5), 11 and 36(7) 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 1st, 2013 (the “**Stay Period**”).
3. On March 20, 2012, Jonathan Solursh was appointed as Chief Restructuring Officer (“**CRO**”) 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. As stated in the Initial CCAA Petition, the Petitioners owed amounts in respect of outstanding wages, salaries, overtime, employee benefits, vacation pay and expenses payable to employees or former employees prior to or at the date of the Initial Order (herein collectively referred to as the “**Employee Payments**”), as appears from the Court record herein.
5. The Initial Order provides that the Petitioners are entitled but not required to pay such Employee Payments, subject to certain terms and conditions, as appears from paragraph 16(a) of the Initial Order.
6. Other than a relatively small number of employees who were retained by the Petitioners to assist with the remaining operations of the Petitioners, the employment of substantially all employees of the Petitioners was terminated shortly before or shortly after the date of the Initial Order.
7. As of the date of the Initial Order, approximately \$5.8 million in accrued and unpaid base wages was owing to the approximately 2665 individuals previously employed by the Petitioners. This amount was comprised of base wages only and did not include approximately \$4.2 million (approximately \$2.1 million in vacation pay, approximately \$1.9 million in overtime wages and approximately \$0.2 million for other obligations) owing to the employees and former employees that are within the applicable

definitions of “wages”. For greater certainty, this excludes all severance and termination obligations.

8. By a *Motion for directions and authorizations pertaining to the payment of certain sums to employees* dated April 2, 2012, the Petitioners sought the issuance of an Order directing and authorizing the Petitioners, under certain conditions, to make certain Employee Payments on account of base wages only.
9. By Order of this Court dated April 5, 2012 (the “**First Payroll Order**”), the Court authorized and directed the Petitioners to make the Employee Payments on account of base wages only, which alleviated some of the aforementioned adverse financial situation which would have been faced by the Petitioners’ former employees had such payments been delayed. All base wages due and owing to employees and former employees were subsequently paid by Petitioners pursuant to the First Payroll Order on or about April 22, 2012.
10. Following the payments referenced in paragraph 9, certain amounts remain owing to certain employees and former employees for vacation pay, overtime wages, or other obligations that would be entitled to priority as stated below. For these amounts owing, those employees and former employees who were not entitled to receive payment of base wages in an amount equal to \$2,000 each under the First Payroll Order remain entitled to a priority claim for the difference between \$2,000 and the amount actually paid to such employees.
11. By this *Second Motion for directions and authorizations pertaining to the payment of certain sums to employees*, Petitioners seek to have this Court authorize further disbursements to employees for the remaining priority amounts by the issuance of an Order directing and authorizing the Petitioners, under certain conditions, to make certain additional Employee Payments as set out below.

II. **PETITIONERS’ PRE-FILING OBLIGATIONS AND THE AUTHORIZATION SOUGHT**

12. As noted above, after the payments made under the First Payroll Order, the Petitioners have accrued unpaid vacation pay, overtime wages and other wage obligations outstanding which are estimated in the amount of approximately \$4.2 million, approximately \$400,000 of which relates to the period beginning six months before the Initial Order and would still be entitled to priority (the “**Remaining Priority Payments**”), excluding employer payroll contributions estimated not to exceed an additional \$41,000.
13. Despite not being obliged to do so under the Initial Order, the Petitioners wish to effect payment of the Remaining Priority Payments, plus the mandatory employer payroll contributions, as authorized by the Initial Order, subject to the authorization, conditions and modalities requested herein.

14. In the present circumstances, it is anticipated that the Petitioners will either present a Plan of Compromise and Arrangement (a "Plan") to the Court for sanction pursuant to the CCAA or will seek an order from the Court to trigger the application of the *Wage Earner Protection Program Act* (S.C. 2005, c. 47, s. 1) ("WEPPA").
15. The nature of the current proceedings is such that a Plan and/or a final distribution will not be completed immediately and, as such, there would be a delay in former employees receiving payment in accordance with the provisions of the CCAA in the normal course.
16. The Petitioners, in consultation with the Third Party Secured Lenders and the Monitor, have considered the potential hardship that such circumstances may impose upon the Petitioners' former employees, and the desire of these former employees to receive payment of the balance of their Remaining Priority Payments prior to the timelines otherwise provided for in these proceedings. It will also be beneficial to the distribution process to have the priority claims of the employees and former employees fully resolved.

2.1 Priority under a Plan

17. Subject to credit being given for the amounts paid under the First Payroll Order, should a Plan be ultimately sanctioned by this Court, the employees and former employees would be entitled to be paid, pursuant to subsection 6(5) or subsection 36(7) of the CCAA, amounts at least equal to the amounts that they would have been qualified to receive under subsection 136(1)(d) and sections 81.3 or 81.4 of the *Bankruptcy and Insolvency Act* (the "BIA"), if the Petitioners had become bankrupt or subject to a receivership on the day on which proceedings were commenced under the CCAA, up to the maximum amount of Two Thousand Dollars (\$2,000) per employee or former employee.
18. As the Remaining Priority Payments owing to the employees and former employees are intended to be made in lieu of the obligations under subsections 6(5) and 36(7) of the CCAA, the Petitioners furthermore respectfully request that the said disbursements be deemed to be made in full and final satisfaction of the employees' and former employees' entitlements under the CCAA to the extent of the amounts actually paid to such employees to a maximum of \$2,000 each, the whole pursuant to the following conditions and modalities.

2.2 Priority in bankruptcy and receivership

19. Alternatively, it is conceivable that a receiver might be appointed in respect of the Petitioners or that the Petitioners might ultimately be declared bankrupt. In the event of a receivership or bankruptcy, the employees or former employees would be entitled to a priority charge in respect of the balance of their accrued and unpaid wages (after

allowing credit for the amounts paid under the First Payroll Order) as defined under the BIA, including the Remaining Priority Payments, to a maximum of \$2,000 each.

20. It is respectfully requested that the Remaining Priority Payments to be made by Petitioners to their employees and former employees be deemed, for each employee, to be the full and final payment due and owing by Petitioners or by any other Person legally bound to make such payments pursuant to subsections 6(5) and 36(7) of the CCAA and subsections 81.3, 81.4 and 136(1)(d) of the *BIA*, in the event that the Petitioners are placed into receivership or bankruptcy, to the extent of the amount received by such employee up to a maximum of \$2,000 per employee, such that no further priority claims can be asserted against the Petitioners to the extent of the amount paid to each such employee in accordance with the order requested.

2.3 WEPPA Benefits

21. As provided by the First Payroll Order, should the Petitioners be placed into receivership or declared bankrupt, each of the Petitioners' employees and former employees (...) may be eligible, pursuant to Section 7(b) of the WEPPA, to a payment (...) up to Three Thousand Five Hundred and Thirty Dollars (\$3,530) (*sauf à parfaire*), being the amount equal to four times the maximum weekly insurable earnings of \$882.70 for 2012 under the *Employment Insurance Act*, less any amounts received on account of such accrued wages from the receiver or trustee.
22. The Remaining Priority Payments and the relief requested by Petitioners, if granted, will not affect the right of the employees and former employees to claim the amounts which they would be entitled to receive under the WEPPA, if and when applicable, nor would it affect any claims which they may have against the Petitioners' former directors and any insurers.
23. After payment of the Remaining Priority Payments, there will remain outstanding and owing to employees and former employees amounts accumulated on account of vacation pay, overtime wages and other priority amounts as well as amounts owing in respect of severance and termination pay. Almost all employees and former employees would therefore remain entitled to assert a claim under the WEPPA if and when applicable.

III. REASONS FOR ORDERS SOUGHT

24. As such, subject to the conditions and modalities set out herein, the Petitioners hereby respectfully request this Court's direction and authorization to disburse the sum of approximately \$400,000 in full and final satisfaction of the Remaining Priority Payments owing to their employees and former employees. The Petitioners shall pay the usual employer payroll taxes and contributions thereon.

25. While Petitioners recognize the hardship caused to the employees and former employees by the delays under the CCAA, Petitioners also understand that the Remaining Priority Payments could materially adversely affect the Third Party Secured Lenders' priority lien rights. Such prejudice would arise if, after the Remaining Priority Payments are made voluntarily by the Petitioners on an expedited basis to employees and former employees on account of their priority claims under the CCAA and BIA, employees and former employees subsequently assert the same priority for the balance of any amounts owing once approval of a distribution or sanctioning of a Plan is sought or in a subsequent receivership or bankruptcy of the Petitioners. The order sought from the Court herein is intended to protect the Third Party Secured Lenders against such an eventuality by ensuring that such employees and former employees do not seek to obtain priority over the Third Party Secured Lenders for additional amounts in excess of the \$2,000 maximum amount to which such employees and former employees are entitled under the BIA and CCAA and which will have been fully paid pursuant to the order sought herein.
26. From a practical point of view, the order sought herein accelerates the benefits which would otherwise be available to employees and former employees upon the sanctioning of a Plan or the approval of a distribution, without having to wait for a Plan or a distribution, in a manner which ensures that other stakeholders with priority claims such as the Third Party Secured Lenders are not prejudiced by subsequent, duplicative priority claims.
27. It is respectfully submitted that the Court's directions and authorizations requested herein are consistent with the effect and spirit of the CCAA, the BIA, the WEPPA and the terms and spirit of the Initial Order and the First Payroll Order issued by this Honourable Court. The proposed limitations are consistent with the provisions of sections 81.3 and 81.4 of the BIA, which provide that the priority claim of an employee for unpaid wages is subject to any amounts actually paid to that employee in respect of those services by a bankruptcy trustee or a receiver.
28. The order and declarations sought herein will serve to immediately alleviate some of the adverse financial consequences of the Petitioners' insolvency as it affected their former employees, and will not reduce or compromise in any way the rights granted to the employees by virtue of the applicable legislation.
29. By proceeding as is respectfully requested herein, the Petitioners seek to ensure that their employees and former employees receive, as soon as possible, those amounts to which they would eventually be entitled, without subjecting the employees and former employees to the delays inherent to the process currently being overseen by this Court, and without withdrawing or otherwise limiting any of the employees' and former employees' pecuniary rights.
30. In addition to the amount proposed to be paid, Aveos will pay the overtime wages for seven unionized employees for the last pay period prior to the Initial Order. These

overtime wages would have been paid in the normal course and would not have been added to the overtime time bank because these employees had reached the maximum of 100 overtime hours in their individual time banks. This represents approximately \$3,500 and an Order of this Court is sought *de bene esse* as such payment is authorized under the Initial Order and the First Payroll Order. While not a priority payment, Aveos is of the view that these overtime wages ought to be paid.

31. If the order requested herein is granted by the Court, the Petitioners will comply with s. 46 of the *Employment Insurance Act*:

Return of benefits by employer or other person

46. (1) If under a labour arbitration award or court judgment, or for any other reason, an employer, a trustee in bankruptcy or any other person becomes liable to pay earnings, including damages for wrongful dismissal or proceeds realized from the property of a bankrupt, to a claimant for a period and has reason to believe that benefits have been paid to the claimant for that period, the employer or other person shall ascertain whether an amount would be repayable under section 45 if the earnings were paid to the claimant and if so shall deduct the amount from the earnings payable to the claimant and remit it to the Receiver General as repayment of an overpayment of benefits.

32. The Petitioners have sought the consent of Human Resources and Skills Development Canada so that the terms of the First Payroll Order with respect to future application of WEPPA would also apply to the Order requested herein.
33. The Petitioners respectfully submit that this Motion should be granted in accordance with its conclusions.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

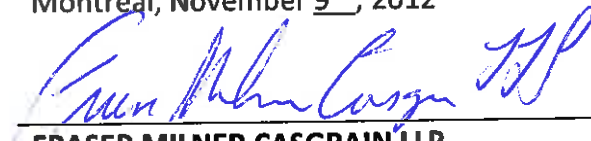
- [1] **GRANT** the Second Motion for directions and authorizations pertaining to the payment of certain sums to employees (the “**Motion**”);
- [2] **DECLARE** that all capitalized terms not otherwise defined in the Motion shall have the meaning ascribed to them in the Initial Order dated March 19, 2012, as amended and restated, granted by the Honourable Mark Schrager, J.S.C., in the present matter;
- [3] **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;
- [4] **ORDER** the Petitioners to pay, on or before December 31, 2012, to their employees and former employees, all accrued and unpaid vacation pay, overtime wages and other priority amounts up to the amount of their remaining

priority claim contemplated at sections 81.3 and 81.4 of the *Bankruptcy and Insolvency Act* (the "BIA") (but not exceeding \$2,000 less the amount received pursuant to the Order of this Court dated April 5, 2012), in the aggregate and total sum of approximately \$400,000 (the "Remaining Priority Payments"), and employer payroll contributions thereon estimated not to exceed \$41,000, which payments will be subject to the following terms, conditions and modalities;

- [5] **ORDER AND DECLARE** that the Petitioners shall be authorized to ascertain if an amount would be repayable under section 45 of the *Employment Insurance Act* if the Remaining Priority Payments were paid to an employee or former employee who is a claimant and, if so, to deduct the amount from the Remaining Priority Payments otherwise payable to the claimant under the preceding paragraph and remit it to the Receiver General as repayment of an overpayment of benefits;
- [6] (...)ORDERS AND DECLARES that the payments to be made to each employee and former employee of the Petitioners, to the extent of a maximum of \$2,000 each, shall be deemed to constitute the payment due and payable by the Petitioners or by any other Person legally bound to make such payments pursuant to subsection 6(5) and subsection 36(7) of the CCAA, and shall be deemed as a payment for the purposes of the priorities contemplated at section 81.3 and 81.4 of the BIA, such that no further priority claims can be asserted by employees and former employees against the Petitioners or any other Person legally bound to make such payments and such that said priorities will be deemed to have been discharged in the event of a bankruptcy or receivership of the Petitioners, to the extent of the amount paid to each such employee;
- [7] (...);
- [8] **ORDER AND DECLARE** that, in the event that employees and former employees or any other Person by subrogation become entitled to assert claims as a result of a receivership or bankruptcy of the Petitioners, they will not be entitled to any priority claims against the Property of the Petitioners save and except in the case of any employee or former employee who receives payment in an aggregate amount less than \$2,000;
- [9] **DECLARE** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioners and any receiving 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 this order, 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;

- [10] **DECLARE** that payments to be made pursuant to this order shall be valid and enforceable and have full effect as to the priorities applicable as against all Property of the Petitioners and opposable to all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners and the Attorney General of Canada, for all purposes;
- [11] **AUTHORIZE** *de bene esse* Petitioners to pay the overtime wages in the aggregate amount of approximately \$3,500 for the last pay period to the seven former employees who had reached the maximum of 100 hours accumulated in their individual overtime bank;
- [12] **DECLARE** that, except as otherwise provided herein, the order rendered herein will not prejudice the rights, recourses and remedies of the employees and former employees against the Petitioners' former directors and any insurers;
- [13] **THE WHOLE WITHOUT COSTS** save and except in the event of a contestation, in which case, with costs against the contesting party.

Montréal, November 9th, 2012

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FRASER MILNER CASGRAIN LLP

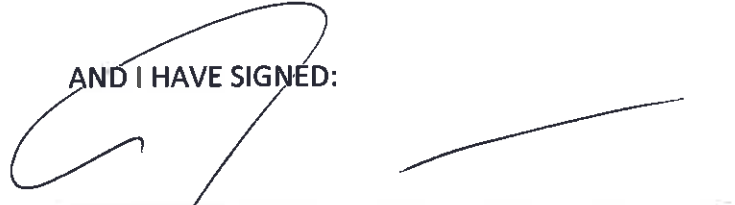
Attorneys for Petitioners

AFFIDAVIT

I, the undersigned, **JONATHAN SOLURSH**, Chief Restructuring Officer of the Petitioners in the present matter, domiciled, for the purposes hereof, at 7171 Côte Vertu West, 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. All of the facts alleged in the present Amended Motion are true.

AND I HAVE SIGNED:



JONATHAN SOLURSH

SOLEMNLY DECLARED before me at Montreal,
this 9th day of November, 2012



**COMMISSIONER OF OATHS FOR THE
PROVINCE OF QUÉBEC**
Roger P. Simand Avocat

NEW NOTICE OF PRESENTATION

TO: SERVICE LIST

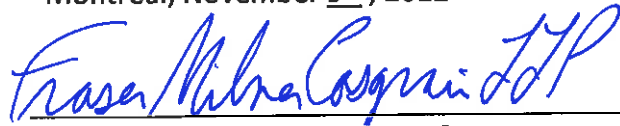
TO: THE ATTORNEY GENERAL OF CANADA,
Me Antoine Lippé and Me Pierre Lecavalier
Complexe Guy Favreau,
200 René-Lévesque Boulevard West, East Tower,
5th Floor
Montreal (Quebec) H2Z 1X4

TO: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (IAMAW),

TAKE NOTICE that the *Amended Second Motion for Directions and Authorizations Pertaining to the payment of Certain Sums to Employees* will be presented before the Honourable Mark Schragger, of the Superior Court, sitting in the Commercial Division, at the Montréal Courthouse, situated at 1, Notre-Dame Street East, Montréal in **room 15.09 on a November 12, 2012, at 14h30**, or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, November 9th, 2012

A handwritten signature in blue ink, reading "Fraser Milner Casgrain LLP", is written over a horizontal line.

FRASER MILNER CASGRAIN LLP

Attorneys for Petitioners

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.**

**And:
INTERNATIONAL ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS (IAMAW) AND THE ATTORNEY
GENERAL OF CANADA,**

Respondents

Roger P. Simard **File: 548731-1**

**AMENDED SECOND MOTION FOR DIRECTIONS AND
AUTHORIZATIONS PERTAINING TO THE PAYMENT OF
CERTAIN SUMS TO EMPLOYEES**

**(Section 6(5), 11 AND 36(7) of the Companies Creditors'
Arrangements Act R.C.S. 1985 c. C-36 ("CCAA"))**

ORIGINAL

(B0822)



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