

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No: 500-11-042345-120

**SUPERIOR COURT
(Commercial Division)**

(Sitting as a court designated pursuant to
the *Companies' Creditors Arrangement
Act*, R.S.C. 1985, c. C-36, as amended)

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

**AVEOS FLEET PERFORMANCE INC./
AVEOS PERFORMANCE
AÉRONAUTIQUE INC.
and
AERO TECHNICAL US, INC.**

Debtors/Respondents

and

FTI CONSULTING CANADA INC.

Monitor

and

AIR CANADA

Petitioner

and

**CREDIT SUISSE AG, CAYMAN ISLANDS
BRANCH**, having a place of business at
Eleven Madison Avenue, New York, NY
10010, as Administrative Agent for the First
Lien Secured Lenders and as
Administrative Agent and Collateral Agent
for the Second Lien Secured Lenders

Intervening Party

DECLARATION OF AGGRESSIVE INTERVENTION

**TO PETITIONER'S *DE BENE ESSE* MOTION FOR AN ORDER LIFTING THE STAY
OF PROCEEDINGS TO CONFIRM THE TERMINATION OF CERTAIN CONTRACTS**

(Section 11 of the *Companies' Creditors Arrangement Act* ("CCAA"))

IN SUPPORT OF ITS AGGRESSIVE INTERVENTION, THE INTERVENING PARTY, CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, SETS OUT THE FOLLOWING:

1. INTRODUCTION

1. On March 19, 2012, this Court issued an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* 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. 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, the Court issued an order appointing Mr. Jonathan Solursh as chief restructuring officer of the Debtors, as appears from the Court record.
4. On April 5, 2012, the Stay of Proceedings was extended until and including May 4, 2012.
5. On April 20, 2012, following the filing of Aveos' *Motion for Approval of a Divestiture Process*, the Court issued an *Order Approving the Divestiture Process* by which it approved a proposed procedure for the divestiture of Aveos' assets.
6. On May 2, 2012, Air Canada filed a *Motion for an Order Lifting the Stay of Proceedings to Confirm the Termination of Certain Contracts* (the "**Air Canada Motion**") for which the Intervening Party hereby seeks authorization to intervene.

2. THE CREDIT AGREEMENTS

2.1 THE SENIOR SECURED CREDIT AGREEMENT

7. On March 12, 2010, Aveos, Aveos Holding Company and Aero Technical Support & Services Holdings entered into a Senior Secured Credit Agreement ("**Senior Credit Agreement**"), said agreement having been amended from time to time, the whole as appears from said agreement communicated herewith, under confidential seal, as **Exhibit I-1**.
8. The Security Documents (the capitalized terms used in section 2.1 of the present Intervention having the meaning ascribed to same in the Senior Credit Agreement, unless otherwise defined herein) are effective to create in favour of the Collateral Agent for the benefit of the Secured Parties, a legal, valid and

enforceable first priority interest (or *hypothec*, if applicable) in the Collateral described therein.

9. The term "Security Documents" is defined as follows in the Senior Credit Agreement:

"Security Documents" shall mean, collectively, (a) the Guarantee, (b) the Pledge Agreements, (c) the Security Agreements, (d) the Mortgages, (e) the Intercreditor Agreement, (f) OPTO Lease Landlord Subordination Agreement, (g) Intercompany Subordination Agreement and (h) each other security agreement or other instrument or document executed and delivered pursuant to Section 9.10, 9.11 or 9.13 or pursuant to any other such Security Documents to secure all of the Obligations.

10. The term "Security Agreements" is defined as follows in the Senior Credit Agreement:

"Security Agreements" shall mean (a) each of the agreements listed on Schedule 1.1(c) entered into by the Credit Parties thereto and the Collateral Agent for the benefit of the Secured Parties on the Closing Date and (b) any other security agreement and/or deed of hypothec with respect to all of the Obligations delivered pursuant to Section 9.10, in each case, as the same may be amended, supplemented or otherwise modified from time to time.

11. The various security agreements listed in Schedule 1.1(c) to the Senior Credit Agreement include, notably for Ontario, a First Lien General Security Agreement and for Québec, a First Lien Deed of Hypothec and Issue of Bonds of Aveos Fleet Performance Inc., granting security over its assets to the Collateral Agent, the whole as appears from a copy of Schedule 1.1(c), from a copy of the First Lien General Security Agreement and from a copy of the First Lien Deed of Hypothec communicated herewith *en liasse* as **Exhibit I-2**.
12. On January 6, 2012, the Senior Credit Agreement was amended notably in order to replace Lehman Commercial Paper Inc., as Administrative Agent, by the Intervening Party, the whole as appears from a copy of the Amendment, Resignation, Consent and Appointment Agreement communicated herewith, under confidential seal, as **Exhibit I-3**.
13. As of April 27, 2012, the amount owed pursuant to the Senior Credit Agreement equalled \$77,930,454.19, this amount being formed of \$75,000,000 in principal and \$2,930,454.19 in interest, plus fees, costs, and other expenses accruing and payable under the Senior Credit Agreement, the whole as appears from the statement of amount outstanding communicated herewith as **Exhibit I-4**.

2.2 THE SENIOR SECURED TERM LOAN AGREEMENT

14. On March 12, 2010, Aveos Fleet Performance Inc., Aveos Holding Company and Aero Technical Support & Services Holdings entered into a Senior Secured Term Loan Agreement ("**Senior Term Loan Agreement**"), said agreement having been amended from time to time, the whole as appears from said agreement communicated herewith, under confidential seal, as **Exhibit I-5**.
15. The Security Documents (the capitalized terms used in section 2.2 of the present Intervention having the meaning ascribed to same in the Senior Term Loan Agreement, unless otherwise defined herein) are effective to create in favour of the Collateral Agent for the benefit of the Secured Parties, a legal, valid and enforceable security interest (or *hypothec*, if applicable) in the Collateral described therein.
16. The term "Security Documents" is defined as follows in the Senior Term Loan Agreement:

"Security Documents" shall mean, collectively, (a) the Guarantee, (b) the Pledge Agreements, (c) the Security Agreements, (d) the Mortgages, (e) the Intercreditor Agreement, (f) OPTO Lease Landlord Subordination Agreement, (g) Intercompany Subordination Agreement and (h) each other security agreement or other instrument or document executed and delivered pursuant to Section 9.10, 9.11 or 9.13 or pursuant to any other such Security Documents to secure all of the Obligations.
17. The term "Security Agreements" is defined as follows in the Senior Term Loan Agreement:

"Security Agreements" shall mean (a) each of the agreements listed on Schedule 1.1(c) entered into by the Credit Parties thereto and the Collateral Agent for the benefit of the Secured Parties on the Closing Date and (b) any other security agreement and/or deed of hypothec with respect to all of the Obligations delivered pursuant to Section 9.10, in each case, as the same may be amended, supplemented or otherwise modified from time to time.
18. The various security agreements listed in Schedule 1.1(c) to the Senior Term Loan Agreement include, notably for Ontario, a Second Lien General Security Agreement and for Québec, a Second Lien Deed of Hypothec and Issue of Bonds of Aveos Fleet Performance Inc., granting security over its assets to the Collateral Agent, the whole as appears from a copy of Schedule 1.1(c), from a copy of the Second Lien General Security Agreement and from a copy of the Second Lien Deed of Hypothec communicated herewith *en liasse* as **Exhibit I-6**.

19. On January 6, 2012, the Senior Term Loan Agreement was amended notably in order to replace Lehman Commercial Paper Inc., as Administrative Agent, by the Intervening Party, the whole as appears from a copy of the Amendment, Resignation, Consent and Appointment Agreement communicated herewith, under confidential seal, as **Exhibit I-7**.
20. As of April 27, 2012, the amount owed pursuant to the Senior Term Loan Agreement equalled \$127,914,361.33, this amount being formed of \$123,298,877.06 in principal and \$4,615,484.27 in interest, plus fees, costs, and other expenses accruing and payable under the Senior Term Loan Agreement, the whole as appears from the statement of amount outstanding (Exhibit I-4).

2.3 SUMMARY

21. In summary, as of April 27, 2012, a total amount of \$205,844,815.42, in principal and interest, was owed pursuant to the Senior Credit Agreement and the Senior Term Loan Agreement and all the assets of Aveos were charged in favour of the Secured Parties in order to secure the repayment of this indebtedness.

3. FACTS JUSTIFYING THE INTERVENING PARTY'S INTEREST IN THE PRESENT CASE

22. The *General Terms Agreement for Technical Services* ("**GTA**") and Service Agreements between Air Canada and Aveos (Exhibits P-1 to P-9) (the "**Air Canada Service Agreements**") are assets of Aveos that are subject to the Secured Parties' security. Air Canada expressly acquiesced and consented to the granting of the security by Aveos in all agreements between Aveos and Air Canada, including the Air Canada Service Agreements, as appears from a copy of the Amendments to GTA dated October 16, 2007 and from a copy of the Letter of Consent dated March 12, 2010 communicated herewith *en liasse*, under confidential seal, as **Exhibit I-8**.
23. As such the Intervening Party has a direct interest in the Air Canada Service Agreements.
24. By the Air Canada Motion, Air Canada seeks to obtain a declaration that the Air Canada Service Agreements can be terminated.
25. The Intervening Party believes that termination of the Air Canada Service Agreements at this point will be detrimental to the divestiture process that has been authorized by the Court on a motion that was not opposed by Air Canada, which was represented at the hearing and made representations to the Court.

26. Termination of the Air Canada Service Agreements at this point could reduce drastically the value that could be realized out of the various assets of the Debtors for the benefit of all creditors.
27. The resulting prejudice to the Debtors and their stakeholders, including the Secured Parties, would be substantial and would undermine the entire proceedings.
28. It is premature in these CCAA proceedings, while the divestiture process is underway and for which significant resources have been expended, for the Court to make a determination about the status of the Air Canada Service Agreements.
29. The Air Canada Motion alleges no actual prejudice caused by the ongoing divestiture process and no actual and present reason to terminate immediately the Air Canada Service Agreements.
30. The present Intervention is well founded in facts and in law.
31. Accordingly, the Intervening Party wishes to intervene in this matter, including without limitation, to be part of any negotiation of a schedule of proceedings to be concluded between the parties.

WHEREFORE, MAY THIS COURT:

GRANT the present Intervention.

DECLARE that the Petitioner, Air Canada, is not entitled to obtain a lift of the Stay of Proceedings.

DECLARE that the Petitioner, Air Canada, is not entitled to terminate in whole or in part the Air Canada Service Agreements (Exhibits P-1 to P-9).

DECLARE that Exhibits I-1, I-3, I-5, I-7 and I-8 filed in support of this Intervention shall be kept confidential and under seal in the Court Record.

THE WHOLE WITHOUT COSTS, save and except in case of contestation.

Montréal, May 3, 2012


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Intervening Party
CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH

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BRANCH**, as Administrative Agent for the
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Administrative Agent and Collateral Agent
for the Second Lien Secured Lenders

Intervening Party


LIST OF EXHIBITS

IN SUPPORT OF THE DECLARATION OF AGGRESSIVE INTERVENTION

**(Re: Petitioner's *de Benne Esse* Motion for an Order lifting the stay of
proceedings to confirm the termination of certain contracts**

- EXHIBIT I-1:** Senior Secured Credit Agreement dated March 12, 2010.
(Under confidential seal)
- EXHIBIT I-2:** *En liasse*, Schedule 1.1(c), First Lien General Security Agreement and First Lien Deed of Hypothec.
- EXHIBIT I-3:** Amendment, Resignation, Consent and Appointment Agreement dated January 6, 2012 (re: Senior Secured Credit Agreement).
(Under confidential seal)
- EXHIBIT I-4:** Statement of amount outstanding as of April 27, 2012.
- EXHIBIT I-5:** Senior Secured Term Loan Agreement dated March 12, 2010.
(Under confidential seal)
- EXHIBIT I-6:** *En liasse*, Schedule 1.1(c), Second Lien General Security Agreement and Second Lien Deed of Hypothec.
- EXHIBIT I-7:** Amendment, Resignation, Consent and Appointment Agreement dated January 6, 2012 (re: Senior Secured Term Loan Agreement).
(Under confidential seal)
- EXHIBIT I-8:** *En liasse*, Amendments to GTA dated October 16, 2007 and Letter of Consent dated March 12, 2010.
(Under confidential seal)

Montréal, May 3, 2012


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Intervening Party
CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH

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Intervening Party

**DECLARATION OF AGGRESSIVE INTERVENTION
AND LIST OF EXHIBITS**

ORIGINAL

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