

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
NO: 500-11-042345-120

SUPERIOR COURT  
Commercial Division  
*Designated tribunal under the  
Companies' Creditors Arrangement Act*<sup>1</sup>

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.

DEBTORS

- and -

FTI CONSULTING CANADA INC.  
MONITOR

TWENTY-FOURTH REPORT TO THE COURT SUBMITTED BY FTI CONSULTING  
CANADA INC., IN ITS CAPACITY AS MONITOR

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INTRODUCTION

1. On March 19, 2012, Aveos Fleet Performance Inc. (“Aveos”) and Aero Technical US, Inc. (“Aero US” and together with Aveos, the “Company” or the “Debtors”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) and an initial order (the “Initial Order”) was made by the Honourable Mr. Justice Schragger of the Superior Court of Quebec (Commercial Division) (the “Court”), granting, *inter alia*, a stay of proceedings against the Debtors until April 5, 2012, (as extended from time to time thereafter<sup>2</sup>, the “Stay Period”) and appointing FTI Consulting Canada Inc. as monitor of the Debtors (the “Monitor”). The proceedings commenced by the Debtors under the CCAA will be referred to herein as the “CCAA Proceedings”.
2. On September 26, 2013, the Company filed its motion requesting the Fourth Interim Distribution to the Secured Lenders in the amount of USD\$18 million. The Monitor will

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<sup>1</sup> *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

<sup>2</sup> The Stay Period was extended five times by way of Orders dated April 5, May 4, July 19, October 19, 2012, February 1, 2013, June 28, 2013 and is set to expire on November 22, 2013.

file a separate report in respect of this motion. This motion is scheduled to be heard on October 21, 2013.

3. On September 26, 2013, the Company filed a motion to request an order authorizing the cancellation of a letter of credit and to make certain distributions (as subsequently amended on October 4, 2013, the “**LC Cancellation Motion**”).
4. The purpose of this report is to advise the Court on the LC Cancellation Motion.
5. In preparing this report, the Monitor has relied upon unaudited financial information of the Debtors, the Debtors’ books and records, certain financial information prepared by the Debtors and discussions with Mr. Jonathan Solursh (and other principals) of R.e.l. group inc., acting as chief restructuring officer (the “**CRO**”). The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information, except as specifically noted below. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management’s assumptions regarding future events; actual results may vary from forecast and such variations may be material.
6. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the previous reports of the Monitor.

#### **THE LC CANCELLATION MOTION**

7. The LC Cancellation Motion results from the agreement reached by Air Canada and Aveos to terminate the agreement in respect of obligations to certain employees transferred from Air Canada to Aveos entered into as of June 22, 2007 (as amended, restated and supplemented from time to time, the “**Pension Benefits Agreement**”) and Aveos’ concurrent undertaking to bring the LC Cancellation Motion. A full copy of the Pension Benefits Agreement, including the five (5) Supplements thereto, is filed as Exhibit R-1 in support of the LC Cancellation Motion.

8. The Pension Benefits Agreement recognized that certain obligations to employees transferred from Air Canada to Aveos had accrued or had become vested while the employees were employed by Air Canada. Air Canada agreed to make certain payments to Aveos under the terms of the Pension Benefits Agreement. To support the payment of these obligations Air Canada posted one or more letters of credit in favour of Aveos, which were renewed or replaced from time to time. The current letter of credit bears reference no. SBGM746187 and was issued for the benefit of Aveos on March 12, 2010 by CIBC, at the request of Air Canada, in the amount of \$20 million (as subsequently renewed and extended from time to time, (the "LC")). Aveos had the ability to draw on the LC for its own account in the event that Air Canada failed to meet its obligations under the Pensions Benefit Agreement. However, upon the insolvency of Aveos, any funds drawn by Aveos (or any successor) pursuant to the LC had to be drawn for the benefit of the employees through a trust arrangement. Aveos has not drawn on the LC and the trust arrangement has not been implemented.
9. Air Canada made the scheduled payments to Aveos in respect of the obligations under the Pension Benefits Agreement up to March 19, 2012 (the date of the Initial Order). Air Canada initially took and has maintained the position that: i) the transferred employees are not party to the Pension Benefits Agreement and as such they cannot assert any claim directly against Air Canada under the Pension Benefits Agreement; and ii) Air Canada does not owe anything to Aveos under the Pension Benefits Agreement by reason of Aveos' failure to honour the continuation of the programs, thus imposing on Air Canada obligations which far exceed any payment that would have been outstanding.
10. On October 4, 2013, the CRO filed its Fourteenth Report (the "**14<sup>th</sup> CRO Report**") which provides significant detail with respect to the scope of the Aveos employee pension and benefit obligations covered by the Pension Benefits Agreement, the transfer of non-unionized employees to Aveos as of October 16, 2007 (the "**Closing Date**"), the transfer of unionized employees to Aveos as of July 14, 2011 (the "**Certification Date**"), the amounts owing to Aveos as of the date of the Initial Order with respect to unionized and non-unionized employees, the negotiation of the PBA Termination Agreement

entered into between Aveos and Air Canada, with the consent of the Monitor, on September 10, 2013 (as subsequently amended as of September 30, 2013, the “**PBA Termination Agreement**”) and proposed distributions to be made in connection with the various obligations covered by the Pension Benefits Agreement.

11. The Monitor and the CRO took the position that, given Aveos’ insolvency, any moneys paid on account of obligations owing under the Pension Benefits Agreement would ultimately be for the benefit of employees entitled to receive benefits thereunder and would be treated as such.
12. The Monitor received an independent legal opinion confirming that the proceeds from the LC and, by extension, any funds paid on account of the eligible claims for pension, employee or retiree obligations pursuant to the PBA Termination Agreement are not part of Aveos' property available for distribution to its creditors generally in these CCAA proceedings, nor in an eventual bankruptcy or receivership. The Monitor also obtained confirmation from the Agent to the Third Party Secured Lenders that they have no interest in such proceeds and do not oppose the release of any funds that could be payable under the Pension Benefits Agreement or any amounts to be paid under the terms of the Order sought in connection with the LC Cancellation Motion.
13. The Monitor was consulted and was involved in overseeing the negotiation of the PBA Termination Agreement. The Monitor was also actively involved with or updated on the discussions and review the analysis performed with respect to eligible Aveos employees or retirees and their benefits as they progressed and can confirm that fulsome efforts were undertaken by the CRO to ensure that the list of eligible beneficiaries was accurate, according to the available information, and the benefits were properly calculated, the whole as set out more fully in the 14<sup>th</sup> CRO Report.
14. The efforts undertaken by the CRO included extensive consultations with the International Association of Machinists and Aerospace Workers (the “**IAMAW**” or the “**Union**”) and its counsel, starting with a meeting with the IAMAW leadership on September 3, 2103. The discussions, which covered the proposed termination of the

Pension Benefits Agreement and proposed distributions, are more fully described in the 14<sup>th</sup> CRO Report.

15. Both the Monitor and the CRO felt that it was important that proper advance notice of the LC Cancellation Motion be given so as to ensure that, in addition to the IAMAW, affected Aveos employees and retirees, as well as non-union employees who were determined not to be eligible to receive individual payments (but would benefit indirectly from the payment to be made to the administrator of the non-union retirement plan), had the opportunity to be made aware of the LC Cancellation Motion.
16. The list of eligible union employees and retirees was provided to counsel to the Union for their review and a specific notice in connection with the LC Cancellation Motion in English and in French (together with the LC Cancellation Motion, the 14<sup>th</sup> CRO Report and this Report) was posted on the Monitor's website.
17. In addition, to ensure proper notice to beneficiaries (including, in particular, those not represented by the IAMAW), individual letters were prepared and sent by the CRO to each identified beneficiary or intended recipient of the proposed distributions giving them notice of the LC Cancellation Motion. At the same time, the CRO also sent letters to former non-union employees who are not slated to receive any distribution as noted in paragraph 15 above, the whole as more fully set out the mailing affidavit filed with the Court.
18. Both the Monitor and the CRO were of the view that it was important that any decision concerning the proposed cancellation of the LC, which directly affects the rights of a specific class of creditors, be approved in an open and transparent manner by the Court.
19. The PBA Termination Agreement will result in four distinct types of payments to various beneficiaries, as summarized below:

Benefits	Total Amount	Number of Aveos eligible employees
<b>Non Union</b>		
Post Retirement Pension Deficit	\$ 390,160	63
Long-Term Disability	\$ 600,288	(payable to Aon Hewitt)
	∅	n/a
<b>Union</b>		
Post Retirement Pension Deficit	\$ 1,916,387	100
Long-Term Disability	∅	n/a
	\$ 2,454,664	15
<b>Sub-Total</b>		
Contribution to Aveos costs	\$ 150,000	-----
<b>Total</b>	<b>\$ 5,511,499</b>	-----

20. The efforts to identify the eligible employees or retirees and quantify the amounts payable, including the review performed by actuaries retained by Air Canada and Aveos, as applicable are more fully explained in the 14<sup>th</sup> CRO Report. The Monitor was involved in overseeing these efforts and is satisfied with the process followed by the CRO.
  
21. It is difficult to accurately assess whether any of these benefits might have been paid in the absence of the efforts undertaken by Aveos and the agreement of Air Canada. The arrangements contemplated by the Pension Benefits Agreement and the LC are complex. Air Canada took the position that Aveos alone had the right to make a claim under the LC; however, Aveos' rights in this regard were complicated by the fact that i) Air Canada could have argued that Aveos was in default of its own obligations under the Pension Benefits Agreement; ii) Air Canada had claims against Aveos which would have resulted in set-off. In addition, under the terms of these various agreements, post Aveos' insolvency, any moneys would have had to be paid to a third party trustee, who would then be tasked with the complicated process and the costs of distributing the trust funds. The Monitor is of the view that the process which lead to the LC Cancellation Motion

and the proposed distributions was more efficient and will generate a greater benefit for the intended beneficiaries by securing the immediate payment of amounts payable under the Pension Benefits Agreement without contestation by Air Canada and also ensures a prompt and efficient distribution in favour of eligible beneficiaries.

22. In addition, the Monitor is of the view that the PBA Termination Agreement, the proposed cancellation of the LC and the proposed distributions, will conclude matters more effectively for the Aveos estate and its stakeholders, does not prejudice any creditor and should result in a greater and more expedient payments in the hands of the eligible beneficiaries.
23. Aveos is not in a position to administer payments over time but will be able to provide the intended beneficiaries with lump sum payments of their accrued benefits free of administrative fees, legal fees, trustee fees and other non-tax related deductions, the whole to the advantage and benefit of those beneficiaries. The Monitor did not consider the individual tax position of each intended recipients of funds and expects that each beneficiaries will seek and obtain proper tax planning advice.
24. The Monitor shares the view of the CRO that it is desirable to see these funds in the hands of eligible employees and retirees as swiftly as possible and with minimal deductions and withholdings. The CRO has committed to turn over the trust portion of the funds to be paid to Aveos, upon receipt, to its payroll administrator, Ceridian, to facilitate the distributions to the intended beneficiaries as soon as practicable, the whole under the supervision of the Monitor.
25. Furthermore, the termination of the Pension Benefits Agreement and proposed cancellation of the LC, will conclude the settlement of all material open matters between Air Canada and Aveos.
26. The CRO, with the assistance of the Monitor, negotiated an agreement for the cancellation of the LC and termination of the Pension Benefits Agreement with Air Canada that resulted in the concurrent signing of the PBA Termination Agreement on or about September 10, 2013, subject to the Court's approval. The obligations under the

PBA Termination Agreement were and remain independent from the Aveos/Air Canada settlement as described in the 14<sup>th</sup> CRO Report and that settlement is not tied to the outcome of the LC Cancellation Motion.

27. The Monitor also wishes to make certain specific comments concerning the conclusions of the LC Cancellation Motion.
28. The immediate payment by Air Canada of accrued benefits under the Pension Benefits Agreement negates the need for the continuation of the LC, which supported the Pension Benefits Agreement. The Monitor understands that the cancellation of the LC and the return of cash collateral or release of security held by the Canadian Imperial Bank of Commerce in favour of Air Canada, and related relief necessitated by the fact that the original LC cannot be found, are essential in the circumstances.
29. Given that it will in effect replace the existing trust arrangement contemplated by the Pension Benefits Agreement for the various reasons noted above, the LC Cancellation Motion seeks a release in favour of Aveos, the CRO, the Monitor and Air Canada (along with their respective partners, principals, directors, officers, employees and agents). It should be noted that said release is not all encompassing and general, but is specifically limited with respect to the payments to be made in accordance with the Order to be rendered by this Court.
30. While the LC Cancellation Motion does not specifically seek Court authorization to terminate the Pension Benefits Agreement, the Monitor wishes to confirm that it specifically approved the PBA Termination Agreement. The Monitor is also satisfied that the LC Cancellation Motion does not breach subsection 32(9)(b) of the CCAA, as the Union is not a party to the Pension Benefits Agreement and the Pension Benefits Agreement is not part of any collective bargaining agreement.
31. Finally, the Monitor is of the view that Section 36 of the CCAA, which governs “disposition of business assets”, is inapplicable given that the funds to be paid in trust to Aveos and distributed to the intended beneficiaries are trust funds that do not form part of



Aveos' property available for distribution to its creditors generally. Nevertheless, this report should be read as the favorable recommendation of the Monitor under subsection 36(3)(c) of the CCAA.

## **CONCLUSION AND RECOMMENDATION**

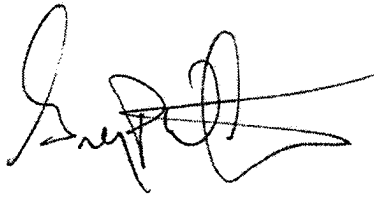
32. Accordingly, the Monitor respectfully recommends that the LC Cancellation Motion be granted by this Court considering the :

- (a) process undertaken by the CRO, under the supervision of the Monitor, which fostered the interest of the ultimate beneficiaries of any payments made under the Pension Benefits Agreement;
- (b) efforts of the CRO to properly determine the eligible beneficiaries and the amounts payable to them and to engage the Union in this process (with respect to unionized employees);
- (c) transparency of a Court sanctioned process;
- (d) benefit to the eligible beneficiaries who stand to receive greater and faster recovery;
- (e) final settlement of one of the significant remaining matters between Aveos and Air Canada, including the right of Air Canada to contest an eventual draw against the LC;
- (f) proper protection of the trust funds to be distributed in favour of intended beneficiaries;
- (g) terms of the LC Cancellation Motion, including the limited scope of the release to be provided by the Order requested by Aveos; and
- (h) lack of prejudice to any creditor of Aveos.

The Monitor respectfully submits this Twenty-Fourth Report.

Dated this 7<sup>th</sup> day of October, 2013.

FTI Consulting Canada Inc.  
In its capacity as Monitor of  
Aveos Fleet Performance Inc. and Aero Technical US, Inc.



Greg Watson  
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