

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

MOTION FOR THE ISSUANCE OF AN AMENDED AND RESTATED INITIAL ORDER
(Section 11 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. On March 19, 2012, the Petitioners filed a *Petition for an Initial Order* pursuant to the CCAA (the "**Initial CCAA Petition**"), as appears from the Court record herein. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Initial CCAA Petition.
2. On the same day, this Court issued an Initial Order (the "**Initial Order**") in respect of the Petitioners, as appears from the Court record herein.
3. As stated in the Initial CCAA Petition, the Petitioners sought a specific order in respect of Sales Taxes required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, as appears from the Court record herein.

4. As stated in the Initial CCAA Petition, the Petitioners also sought the establishment, by this Honourable Court, of certain charges and securities in the Property of the Petitioners, namely, a Director's charge to the extent of the aggregate amount of Five Million Dollars (\$5,000,000), as well as an Administration Charge in the aggregate amount of Three Million Dollars (\$3,000,000), as appears from the Court record herein.
5. The Property of the Petitioners is defined in the Initial Order as the "present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof."
6. On March 20, 2012, the Petitioners filed a *Motion for the Appointment of a Chief Restructuring Officer* (the "**CRO Motion**") in view of having this Honourable Court appoint Mr. Jonathan Solursh as the Chief Restructuring Officer ("**CRO**") with authority to carry on, manage, operate and supervise the management and operations of the business and affairs of the Petitioners, subject to certain terms and conditions, as appears from the Court record herein.
7. On the same day, this Honourable Court granted in part the said CRO Motion and appointed Mr. Jonathan Solursh as Chief Restructuring Officer over the Petitioners, subject to the terms and conditions contained in the *Order for the appointment of a Chief Restructuring Officer* rendered by the Honourable Mark Schrager, J.S.C. (the "**CRO Order**").
8. As appears from the said CRO Order, this Court established a charge and security in the Property to the extent of the aggregate amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "**CRO Charge**").
9. By this Motion, the Petitioners seek the issuance of an Amended and Restated Initial Order in view of:
 - a) circumscribing the extent of the Petitioners' obligations in respect of the Sales Taxes, namely as to those that were accrued or collected prior to the issuance of the Initial Order but due to be remitted subsequent thereto;
 - b) ordering and otherwise facilitating the registration and publication, in the appropriate registries, of the various Charges established by this Honourable Court, namely the Directors' Charge, Administration Charge and CRO Charge and in view of ordering the registrars of the appropriate registries to register and publish the said charges.

II. THE SALES TAXES

10. The Initial Order, at paragraph 18, reads as follows:

[18] **ORDERS** that the Petitioners shall remit, in accordance with legal requirements, or pay:

- a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes are accrued or collected after the date of this Order, [or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order], and
- c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Petitioners.

(Emphasis added)

- 11. The Petitioners herein respectfully seek that the Initial Order be amended and restated in order to exclude the above underlined and bracketed reference to the obligation by the Petitioners to remit such Sales Taxes that were accrued or collected prior to the date of the Initial Order but which were to be otherwise remitted only after the date of the Initial Order.
- 12. Indeed, the Sales Taxes contemplated by that phrase amount to \$3,463,863.07 which would fall due for remittance on or before April 2, 2012. There will be an additional amount of Sales Taxes estimated at \$1,400,000.00 for the period between March 1 to March 19, 2012, which would fall due for remittance on the next scheduled remittance date in April 2012. The precarious financial position in which the Petitioners find themselves are such that they cannot remit those sums without substantially derailing the restructuring process being carried on under the auspices of this Honourable Court.
- 13. The Petitioners are now of the view that such Sales Taxes are pre-filing obligations that in the normal course would be dealt with pursuant to a Plan of Arrangement or otherwise in the proceedings;
- 14. It is respectfully submitted that for the Petitioners to be obliged to remit those sums would be contrary to the effect and spirit of the CCAA and of the other terms and spirit of the Initial Order issued by this Honourable Court.

15. Indeed, it is moreover submitted that pursuant to the Initial Order and the applicable provisions of the CCAA, the Petitioners are entitled to suspend the remittance of the said sums as they constitute pre-filing obligations or claims which are subject to the stay of proceedings and to other modalities which were ordered by this Court and envisaged by the legislator.

III. THE REGISTRATION OF THE DIRECTORS' CHARGE, ADMINISTRATION CHARGE AND CRO CHARGE

16. The Initial Order and the CRO Order contained customary provisions in respect of the establishment of charges and securities in the Property, namely:

- a) the Directors' Charge in the amount of Five Million Dollars (\$5,000,000);
- b) the Administration Charge in the amount of Three Million Dollars (\$3,000,000); and
- c) the CRO Charge in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000).

17. This Court did not, however, issue a specific order with respect to the registration and publication of these charges in view, *inter alia*, of rendering them public and opposable to third parties.

18. Given the nature of these charges, their registration and publication in the Quebec Land Registry cannot be effected without a specific order from this Honourable Court ordering the registration and publication of the said charges and specifically ordering the Registrar of the Land Registry to proceed with such registration and publication.

19. It is therefore respectfully submitted that the Initial Order be amended and restated so that it may include an order specifically ordering the Land Registrar to register in the Registration Division of Montreal, the Initial Order in the present matter, the CRO Order, as well as the order to be rendered herein, as against the following real rights:

All the rights upon an emplacement located on the site of the Montreal-Pierre Elliott Trudeau International Airport, in the City of Montreal, Province of Quebec, known and designated as lot number **THREE MILLION EIGHT HUNDRED NINETY-NINE THOUSAND THREE HUNDRED AND FORTY-FOUR (3 899 344)** of the Cadastre du Québec, Registration Division of Montreal; with all the buildings thereon erected, more particularly the building and other structures erected thereon bearing civic number 7171 Côte Vertu West boulevard, City of Montreal (Borough of Saint-Laurent), Province of Quebec, H4Z 1Z3".

20. Similarly, it is respectfully submitted that the Initial Order be amended and restated so that it may include an order specifically ordering the Registrar of the Quebec *Régistre*

des droits personnels et réels mobiliers ("RDPRM") to publish and register the hypothecs and charges created by the Initial Order in the present matter, the CRO Order, as well as the order to be rendered herein, as against the Property of the Petitioners.

21. Moreover, in order to facilitate the Registration of the various Charges contemplated herein, it is respectfully requested that this Court clarify the qualification of the said Charges, so as to ensure they are deemed to be hypothecs as per the meaning of the Civil Code of Quebec and other ancillary regulations, the whole for the purposes of the specific registration requirements applicable to the Land Registry and the RDPRM;
22. 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 present Motion;
- [2] **DECLARE** that all capitalized terms not otherwise defined in the present Petition shall have the meaning ascribed to them in the Initial Order granted by the Honourable Mark Schragger, J.S.C., in the present matter dated March 19, 2012.
- [3] **DECLARE** that the time for service of the present 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] **DECLARE** that paragraph 18 of the Initial Order be amended to read as follows:
 - [18] **ORDERS** that the Petitioners shall remit, in accordance with legal requirements, or pay:
 - a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
 - b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes are accrued or collected after the date of this Order; and
 - c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of

any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Petitioners.

[5] **ORDER** the Land Registrar to register in the Registration Division of Montreal, the following:

- a) the *Initial Order* rendered by the Honourable Mark Schrager, J.S.C., dated March 19, 2012, in the matter bearing number 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.;
- b) the *Order for the Appointment of a Chief Restructuring Officer* rendered by the Honourable Mark Schrager, J.S.C., dated March 20, 2012, in the matter bearing number 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.; and
- c) the Order to be rendered herein

at the Land Registry Office for the Registration Division of Montreal, as against the following immovable property:

All the rights upon an emplacement located on the site of the Montreal-Pierre Elliott Trudeau International Airport, in the City of Montreal, Province of Quebec, known and designated as lot number **THREE MILLION EIGHT HUNDRED NINETY-NINE THOUSAND THREE HUNDRED AND FORTY-FOUR (3 899 344)** of the Cadastre du Québec, Registration Division of Montreal; with all the buildings thereon erected, more particularly the building and other structures erected thereon bearing civic number 7171 Côte Vertu West boulevard, City of Montreal (Borough of Saint-Laurent), Province of Quebec, H4Z 1Z3”.

(hereafter the “**Immovable**”);

- [6] **ORDER AND DECLARE** that the Directors’ Charge, the Administration Charge and the CRO Charge constitute and shall be deemed as hypothecs for publication purposes only , and that said Charges be also secured by a hypothec on the Petitioners’ Property, including their rights in and to the Immovable;
- [7] **ORDER** the Personal and Movable Real Rights Registrar to register in the *Registre des droits personnels et réels mobiliers* the hypothecs and charges created by the following:

- a) the *Initial Order* rendered by the Honourable Mark Schrager, J.C.S., dated March 19, 2012, in the matter bearing number 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.; and
- b) the *Order for the Appointment of a Chief Restructuring Officer* rendered by the Honourable Mark Schrager, J.C.S., dated March 20, 2012, in the matter bearing number 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.; and
- c) the Order to be rendered herein;

as against the Property of the Petitioners, namely: all present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof.

- [8] **THE WHOLE WITHOUT COSTS** save and except in the event of a contestation, in which case, with costs against the contesting party.

Montréal, March 27, 2012



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 BAN3, 2311 Blvd. Alfred Nobel, in the City of Montreal, Province of Quebec, do solemnly declare:

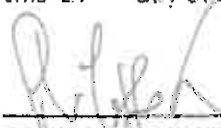
1. I am the Chief Restructuring Officer of the Petitioners in the present matter;
2. All of the facts alleged in the present Motion are true.

AND I HAVE SIGNED:



JONATHAN SOLURSH

SOLEMNLY DECLARED before me at Montreal,
this 27th day of March 2012



**COMMISSIONNER OF OATHS FOR THE
PROVINCE OF QUÉBEC**



NOTICE OF PRESENTATION

TO: SERVICE LIST

**AND: Department of Justice (CRA)
Complexe Guy-Favreau
c/o Mr. Stephen Thibault
200 René-Lévesque West
9th Floor, East Tower
Montreal QC H2Z 1X4**

**AND: Ministère du Revenu du Québec (TPS et TVQ)
1600 René-Lévesque West
3rd Floor
Montreal QC H3H 2V2**

**AND: Bureau de la publicité des droits de la
circonscription foncière de Montréal
2050, rue de Bleury
RC 10
Montréal QC H3A 2J5**

**AND: Registre des droits personnels et réels mobiliers
1, rue Notre-Dame Est
Montréal QC H2Y 1B6**

TAKE NOTICE that the *Motion for the Issuance of an Amended and Restated Initial Order* will be presented before the Honourable Mark Schrager, of the Superior Court, sitting in the Commercial Division, at the Montréal Courthouse, situated at 1, Notre-Dame Street East, Montréal in room 16.12 on March 30, 2012 at 9h30 a.m., or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, March 27, 2012



FRASER MILNER CASGRAIN LLP

Attorneys for Petitioners

No. 500-11-042345-120

SUPERIOR COURT
Commercial Division
DISTRICT OF MONTRÉAL

**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

Roger P. Simard

File: 548731-1

**MOTION FOR THE ISSUANCE OF AN AMENDED
AND RESTATED INITIAL ORDER**

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

ORIGINAL



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